

IN THE
Supreme Court of the United States

October Term, 1972
No. 71-1456

SALYER LAND COMPANY, et al.,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

**Appeal From the United States District Court,
Eastern District of California.**

APPENDIX.

IN THE
Supreme Court of the United States

October Term, 1915
No. 71-1436

THE LAND COMPANY, et al.
Appellants,
vs.

THE LAKE BASIN WATER STORAGE DISTRICT, a corp.
the district,
Appellee.

Appeal from the United States District Court,
Eastern District of California.

APPENDIX

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Chronological List of Relevant Docket Entries.

DATE PROCEEDINGS

5/5/70

Fld cmplt; iss sums. JS-5

6/1/70

Fld sums ret'd svd.

6/9/70

Fld stipln & ord thereon that deft has to 7/10/70 to answer, etc.

6/6/70

Fld stipln & ord thereon that hrng on defts motn to dismiss may be contd to 9/21/70.

6/26/70

Fld dft's notc of motn & motn to disms, notc for hrng on 8/10/70

9/1/70

Fld deft's supplmntl memo of pts & auth in support of motn to disms.

9/18/70

Fld pltf's memo of Pts & authys in oppositn to Mtn to dismiss.

9/21/70

Ent prcdgs on hrng on deft's motn to dismiss as to Tulare Lake, etc. Ord stand submt'd. Briefs to follow.

10/2/70

Fld reply memo of pts & auth of deft.

11/13/70

Fld memorandum & order denying deft's motn to dismiss & ordered a three judge court be convened. Mld copies to respectv cns'l.

11/20/70

Fld deft's request & ord thereon that deft has to 12/15/70 to file answer.

12/14/70

Fld answer of deft, Tulare Lake Basin after Storage Dist.

12/16/70

Fld copy of letter of Judge Crocker to respctv cncl setting April 29 & 30 for trial of this 3 judge case. Discovery to be completed 30 days prior to trial & trial briefs to be submitted to all three judges 10 days prior to trial.

3/10/71

Fld letter from Judge Crocker to respctv patys advancing trial date of 3 judge court from April 29 & 30 to April 22 & 23, 1971

3/12/71

Fld letter from Judge Crocker to respctv ptys tentatively re-setting trial dates for June 16, 17 & 18.

4/20/71

Mld notc of trial by three-judge court to Gov. Reagan & Atty Genl in compliance with 28 USC 2284.

4/30/71

Fld pltf's request for admissions.

5/24/71

Fld deft, Tulare Lake Basin Water Dist answers & objections to requests for admission of Salyer Land Co.

6/1/71

Fld ex parte order that California Central Valleys Flood Control Assn is granted permission to file an amicus curiae brief.

6/4/71

Fld plaintiff's trial brief.

6/7/71

Fld def't's trial brief. Mld copies to Judges Browning & Schnacke.

6/9/71

Fld Ptn of Denslow Green & ORD thereon to app as amicus curiae on behalf of Irrigation Districts of Calif.

6/10/71

Fld Plaintiff's statement of facts.

6/10/71

Fld Plaintiff's list of exhibits.

6/11/71

EX PARTE ORD Purs to req of cns for pltf & with concurrence of counsel for defts ORD trial date of 6/16/71 be vacated & set aside and exhibits of resp cns'l to be lodged with clerk and case be submitted on agreed statmnt of facts. Closing Briefs to be filed 15-15-15.

6/14/71

Fld pltf's response to Def't's statement of facts.

6/28/71

Fld brief of Central Valleys Flood Control Assn (as amicus curiae)

7/1/71

Fld Amicus Curiae Brief of Irrigation Dists Ass'n of California.

7/7/71

Fld pltf's opening brief following submission of factual statements.

7/26/71

Fld defendant's opening brief. Mld copies to Judge Browning & Schnacke

8/11/71

Fld pltf's reply Brief following submission of Factual Statements. Mld copies to Judges Browning & Schnacke.

9/30/71

Fld Pltf's supplemental Memorandum. Mld copies to Jdgs Browning & Schnacke

10/4/71

Fld supplmntl memo of defts. Mld copies to Judges

2/17/72

Fld memo & order of Jdg. Crocker & Jdg. Schnacke: Deft ordered to submit a plan to correct malapportionment within 6 mo of date this decision becomes final. If deft unable to redevision the district into divisions which are reasonably equal in assessed valuation & also possess the same general character of water rights or interest in the water of a common source as required by sect 39777 of the Calif. Water Code, the plan may provide for elections at large. Fld concurring in part & dissenting in part opinion of Judge Browning. Mld copies to respcv ptys.

3/10/72

Pur to Jdg Crocker *entered* judgment htf filed on 2/17/72. Mld notc of entry of jdgmt to respcv ptys.

3/14/72

Fld pltf's notice of appeal to the Supreme Court of the United States.

—5—

Complaint.

Filed May 5, 1970

C. RAY ROBINSON

650 West 19th Street

Merced, California 95340

Telephone: 209-722-6244

THOMAS KEISTER GREER

Rocky Mount, Virginia 24151

Telephone: 209-483-5332

Attorneys for Plaintiffs

United States District Court, Eastern District of California, Southern Division.

Salyer Land Company, a California corporation, C. Everette Salyer; Fred Salyer; Lawrence Ellison; and Harold Shawl, Plaintiffs, v. Tulare Lake Basin Water Storage District, a public district, Defendant. Civil No. F-414.

NOW COME the plaintiffs Salyer Land Company, a California corporation, C. Everette Salyer, Fred Salyer, Lawrence Ellison, and Harold Shawl, and complain of the defendant Tulare Lake Basin Water Storage District, a public district, as follows:

I

The jurisdiction of this Court is invoked pursuant to the provisions of Section 1343 of Title 28 of the United States Code, that is to say, this is a civil action authorized by Section 1983 of Title 42 of the United States Code to redress the deprivation, under color of State law, statute, ordinance, regulation, custom and usage, of rights, privileges, and immunities secured by the Constitution and Laws of the United States providing for equal rights of citizens or of all persons within the

jurisdiction of the United States. The rights here sought to be redressed are rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, as hereinafter more fully appears.

II

Plaintiff Salyer Land Company is now, and at all times herein mentioned since 1946 has been, a corporation organized and existing under and by virtue of the laws of the State of California. Salyer Land Company farms approximately 28,000 acres of land in Tulare Lake Basin Water Storage District, of which approximately 12,000 acres are owned by it and approximately 16,000 acres leased from others.

III

Plaintiffs C. Everette Salyer and Fred Salyer are citizens of the State of California, are landowners in Tulare Lake Basin Water Storage District, and are members of the Board of Directors of Tulare Lake Basin Water Storage District. Plaintiffs C. Everette Salyer and Fred Salyer own 320 acres of land in the District as tenants in common.

IV

Plaintiff Lawrence Ellison is a citizen of the State of California, a resident of Tulare Lake Basin Water Storage District, and a registered voter. He does not own any land therein.

V

Plaintiff Harold Shawl is a citizen of the State of California and a landowner in defendant Tulare Lake Basin Water Storage District. Plaintiff Shawl owns a one-half undivided interest in 65 acres of land in the District.

VI

Defendant Tulare Lake Basin Water Storage District is a public district organized in 1926 under the California Water Storage District Law, California Water Code Sections 39000 ff., comprising approximately 193,000 acres in Tulare Lake Basin. A map showing the boundaries of said defendant District is attached hereto and marked Exhibit 1.

VII

Section 41000 of the California Water Code is applicable to water storage districts, and at all times material herein it has provided, and now provides, as follows:

"Only the holders of title to land are entitled to vote at a general election."

VIII

Section 41001 of the California Water Code at all times material herein has provided, and now provides, as follows:

"Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars (\$100), or fraction thereof, worth of his land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

IX

At all times since its formation in 1926, such elections as have been held in Tulare Lake Basin Water Storage District have been conducted pursuant to and in accordance with said Sections 41000 and 41001 of the California Water Code, that is to say, only landowners have been allowed to vote, and each landowner has

been allotted one vote for each \$100 or fraction thereof worth of his land.

X

The J. G. Boswell Company, the largest landowner in Tulare Lake Basin Water Storage District, owns approximately 40 percent of the land therein. The said The J. G. Boswell Company at all times herein mentioned has controlled, and it now controls, Tulare Lake Basin Water Storage District by election of six of the eleven directors, all six of whom receive salaries from The J. G. Boswell Company independent of their compensation as officers and directors of the District. The President, Vice President, and Secretary of the District all are Boswell stockholders who receive regular compensation from said company.

XI

Tulare Lake Basin Water Storage District was divided into eleven divisions at the time of its formation in 1926, and the same eleven divisions are in effect today, there having been no change of the division boundaries for over 40 years. The division boundaries and the numbers assigned to said divisions, are correctly and accurately shown on the map attached hereto as Exhibit 1. There are seventeen separate landowners in Division 1, forty-one in Division 2, thirteen in Division 3, one hundred and ten in Division 4, eleven in Division 5, nineteen in Division 6, seventy-nine in Division 7, one hundred in Division 8, five in Division 9, four in Division 10, and twelve in Division 11. There are approximately 40 residents of the District.

XII

The J. G. Boswell Company maintains its control of Tulare Lake Basin Water Storage District by keeping in force the division boundaries which have existed since the said District was formed in 1926. The sizes of the several divisions, and the assessed valuation of the lands therein, are grossly disproportionate. Division 4, represented by plaintiff Fred Salyer, contains fifty-two sections of land, while Division 10, represented by a vice president of the said The J. G. Boswell Company, A. L. Vandergriff, contains only thirteen and one-half sections. The assessed valuation of the lands in said Division 4 in 1967 was \$2,047,620, while the assessed valuation of the lands in said Division 10 was only \$624,840. Plaintiffs are informed and believe, and upon such information and belief allege, that the assessed valuations of the lands in Division 4 and Division 10 are at the present time similarly disproportionate. Although required by law until 1969 to be redivisioned following adoption of a project, and not less than 60 days prior to the next general election thereafter to be held in the District, Tulare Lake Basin Water Storage District has not been redivisioned in over 40 years.

XIII

No general water storage district election has been held in Tulare Lake Basin Water Storage District for over twenty-three years, although such elections are required by statute to be held on the first Tuesday in February in each odd-numbered year. In 1967 plaintiffs

and certain other minority landowners petitioned for a special election pursuant to Section 41550 of the California Water Code, which election was held May 23, 1967. But there was no redivisioning prior to said election, there has been no redivisioning since said election, and there was no general water storage district election the first Tuesday in February of 1969, as required by Section 41300 of the California Water Code.

XIV

Defendant Tulare Lake Basin Water Storage District is a governmental entity. There is attached hereto and marked Exhibit 2 an opinion of the Attorney General of the State of California that Tulare Lake Basin Water Storage District is a political subdivision of the State of California. As such political subdivision Tulare Lake Basin Water Storage District has at all times herein mentioned exercised, and it now exercises, the powers of taxation and eminent domain, and it issues bonds which are liens upon all the lands in the District. The said District as a governmental entity has applied for disaster relief from the Office of Emergency Planning pursuant to Sections 1855 ff. of Title 42 of the United States Code, and has been granted public moneys of the United States in response to such application. The defendant Tulare Lake Basin Water Storage District as a public entity has sought permission to intervene as *parens patriae* in a case pending in this Court wherein the United States seeks to impose acreage restrictions on lands served by Pine Flat Reservoir, and this Court

has recognized Tulare Lake Basin Water Storage District's standing as *parens patriae*, and has granted its application for such intervention.

XV

The lands in Tulare Lake Basin Water Storage District lie in the southern portion of Kings County, California, and are fertile and highly productive. The said lands are subject, however, to cycles of flood and drought, and the repelling of water in times of flood and the securing of water in times of drought are among the most important functions which can be performed by any governmental agency insofar as the residents and landowners of Tulare Lake Basin Water Storage District are concerned. Plaintiff Ellison alleges that his residence is in the North Central area of Tulare Lake Basin and that floodwaters are now standing against the North Central Levee, which levee protects the North Central area from flooding. Plaintiffs, including plaintiff Ellison, allege that those floodwaters, which reached a height of 192.5 feet U.S.G.S. datum in 1969, would have been three feet lower had Tulare Lake Basin Water Storage District exercised the flood control rights and powers which it possesses. Plaintiffs allege that the Board of Directors of the defendant District, controlled and dominated by The J. G. Boswell Company, failed and refused during the 1969 flood to take action to insure the use of Buena Vista Lake for the storing of floodwaters on the Kern River, as said Lake had always been used in the past, and these plaintiffs allege that such failure and refusal was

occasioned by The J. G. Boswell Company's possession of Buena Vista Lake under a long term agricultural lease.

XVI

The actions and positions of Tulare Lake Basin Water Storage District are of immediate, direct and vital importance to every resident of the District, are of immediate, direct and vital importance to every landowner in the District, and are of immediate, direct and vital importance to every lessee of land in the District. Farmers who lease rather than own land are not accorded the privilege of voting in the District's elections, although the District's functions in flood control and water matters are of immediate, direct and vital importance to such lessees. Plaintiff Salyer Land Company has leased all the lands of Kings County Development Company, a total of approximately 5,000 acres, for a period of 15 years, and plaintiff Salyer Land Company is in possession of said lands, actively farms them, and pursuant to the terms of its lease with the landowner, Kings County Development Company, pays the taxes and assessments on said lands. Salyer Land Company nevertheless derives no voting right whatever by virtue of the said lease, or by virtue of any other of the lands it has leased in Tulare Lake Basin Water Storage District.

XVII

Plaintiff Ellison is 62 years old, and has spent 40 years in the Tulare Lake area. He has held positions of responsibility in farming companies throughout that

time, and is familiar with the problems of water management and flood control with which Tulare Lake Basin Water Storage District is concerned. Plaintiff Ellison desires to vote in Tulare Lake Basin Water Storage District elections, but he will not be permitted to unless this Court so orders.

XVIII

Plaintiffs allege that Section 41000 and 41001 of the California Water Code permitting only landowners to vote in water storage district elections, and permitting each landowner one vote for each \$100 or fraction thereof worth of his land, invidiously discriminate against residents who are not landowners, invidiously discriminate against small landowners, invidiously discriminate against all landowners other than the largest, the said The J. G. Boswell Company, invidiously discriminate against farmers who lease rather than own their land, and subject all the residents, landowners and farming operators in Tulare Lake Basin Water Storage District to the rule of a private corporation. The J. G. Boswell Company at all times herein mentioned has made, and it now makes, policy for Tulare Lake Basin Water Storage District, although the president of the said The J. G. Boswell Company is not a director of the said Tulare Lake Basin Water Storage District, and the headquarters of the said The J. G. Boswell Company is in Los Angeles rather than in Kings County.

XIX

Plaintiffs allege that the said Sections 41000 and 41001 of the California Water Code invidiously discriminate against plaintiffs and others similarly situated, deprive plaintiffs and others similarly situated of their rights, privileges, and immunities under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and that said Sections 41000 and 41001 of the California Water Code are unconstitutional and void.

XX

Defendant Tulare Lake Basin Water Storage District has enforced, executed and administered Sections 41000 and 41001 of the California Water Code, and unless enjoined and restrained by this Court, defendant Tulare Lake Basin Water Storage District will continue to enforce, execute and administer said statutes, and will continue to deprive, as it has deprived in the past, plaintiffs and others similarly situated with them, of their rights under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

XXI

The damage and injury done to plaintiffs by reason of their being deprived of the foregoing rights is continuing and irreparable, and there is no adequate remedy at law.

WHEREFORE, plaintiffs pray that this Court:

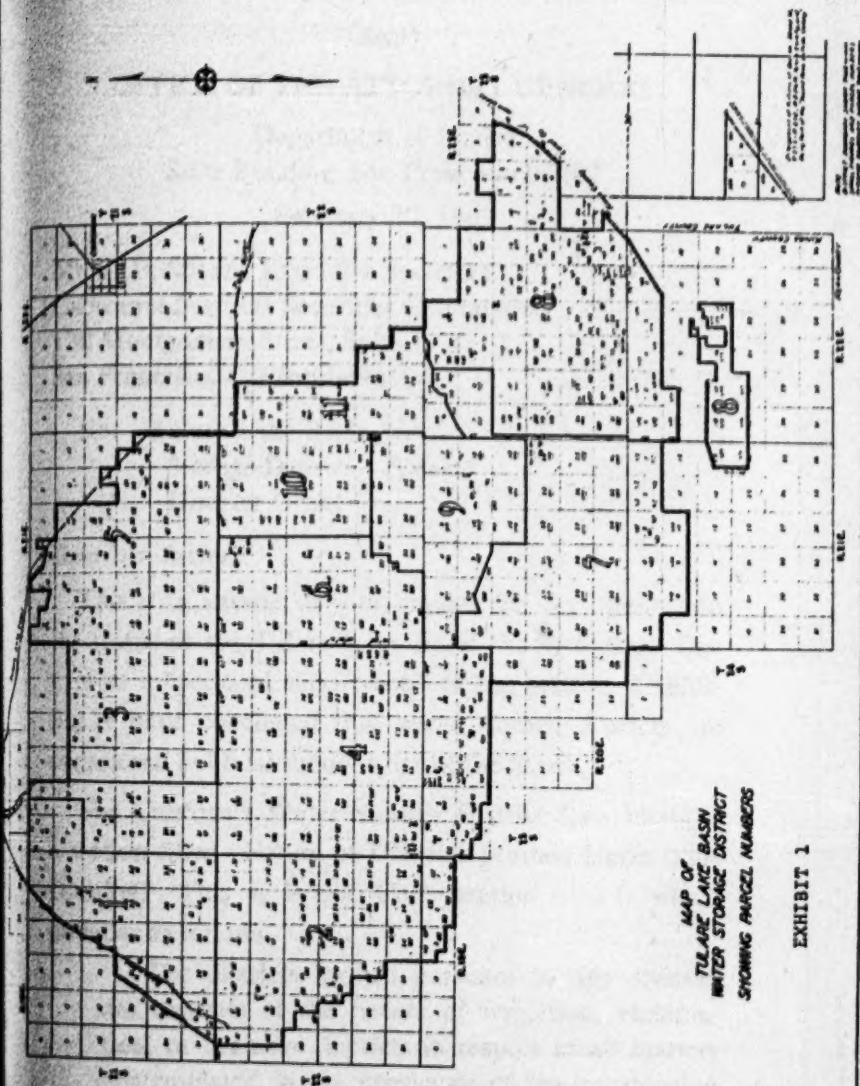
1. Convene a statutory court of three judges pursuant to Section 2284 of Title 28 of the United States Code for the purpose of hearing and determining this cause.
2. Adjudge and declare Sections 41000 and 41001 of the California Water Code to be in violation of the Constitution of the United States, and therefore void.
3. Issue preliminary and permanent injunctions restraining and enjoining the defendant Tulare Lake Basin Water Storage District, and its agents, servants, and employees, from enforcing, executing, administering or in any manner giving effect to Sections 41000 and 41001 of the California Water Code.
4. Require defendant Tulare Lake Basin Water Storage District to submit a plan whereby all residents of Tulare Lake Basin Water Storage District will be allowed to vote, without regard to land ownership, or in the alternative, a plan whereby all residents, lessees, and landowners will be allowed to vote, whether or not such residents be landowners, whether or not such lessees be landowners and whether or not such landowners be residents, but with provisions that no resident, lessee or landowner shall in any event or circumstance have more than one vote, however small or however great his landholdings may be.
5. Require defendant Tulare Lake Basin Water Storage District to submit a plan whereby all elections shall be at large.

6. Require defendant Tulare Lake Basin Water Storage District to hold a general water storage district election not later than the time set forth in Section 41300 of the California Water Code, that is to say, not later than the first Tuesday in February of 1971, or at such earlier time as the Court may direct.

7. Grant plaintiffs all such other and further and general relief as the circumstances of this case may require or to equity shall seem meet.

Dated this 5th day of May, 1970.

C. RAY ROBINSON
THOMAS KEISTER GREER
Attorneys for Plaintiffs



MAP OF
TILLAMOOK LAKE BASIN
WINTER STORAGE DISTRICT
SHOWING PARCEL NUMBERS

EXHIBIT 1

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EXHIBIT 2

(Seal)

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

State Building, San Francisco 94102

February 20, 1969

Mr. T. P. Stivers, Executive Secretary
California Districts Securities Commission
120 Montgomery Street, Suite 1370
San Francisco, California 94104

Re: Tulare Lake Basin Water
Storage District—Federal
Disaster Grant

Dear Mr. Stivers:

This is in answer to your request for our opinion on the status of the Tulare Lake Basin Water Storage District as a "political subdivision" of the State of California. I have concluded that water storage districts are considered political subdivisions of the State.

The California Water Storage District Law includes a section titled "Nature of Districts Formed Under This Division." This is Water Code section 39060 which provides as follows:

"The districts formed pursuant to this division are districts of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the constitution of the State of California relating to irrigation, reclamation, or drainage."

Thus the conclusions reached as to the nature of irrigation districts would also apply to water storage districts, and it is well settled that irrigation districts are considered political subdivisions and agencies of the State. See *Glenn-Colusa Irrigation District v. Ohrt*, 31 Cal.App.2d 619, 621 (1939) and cases cited therein.

The phrase "political subdivision" also appears in several other California codes. It is significant that these codes define the use of the phrase to specifically include districts such as a water storage district. See, e.g., Labor Code § 1721; Military & Veterans Code § 1260; Public Utilities Code § 1401.

Very truly yours,

THOMAS C. LYNCH
Attorney General

By /s/ Richard I. Gilbert

RICHARD I. GILBERT
Deputy Attorney General

RIG:dl

cc: James G. McCain, Esq.

Carlos S. Fowler, Esq.

Notice of Motion and Motion of Defendant to Dismiss.

Filed June 26, 1970.

[Caption omitted in printing]

**TO PLAINTIFFS IN THE ABOVE-ENTITLED
ACTION AND TO THEIR ATTORNEYS OF
RECORD.**

PLEASE TAKE NOTICE that on Monday, August 10, 1970, at 10:00 a.m. or as soon thereafter as counsel can be heard, defendant will move the above-entitled court in the Courtroom of the Honorable M. D. Crocker, United States Courthouse, Fresno, California, for an order dismissing the Complaint.

Said motion is made upon the ground that the Complaint fails to state a cause over which a court of the United States has jurisdiction and upon all grounds stated in defendant's Memorandum of Points and Authorities served and filed concurrently herewith. Said motion is based upon this Notice of Motion, upon defendant's said Memorandum of Points and Authorities, and upon all of the documents and records on file in the above-entitled action.

Dated: June 24, 1970.

**DONNELLY, CLARK, CHASE &
HAAKH**

ERNEST M. CLARK, JR.

NEWELL & CHESTER

ROBERT M. NEWELL

By /s/ Ernest M. Clark, Jr.

Attorneys for Defendant

Memorandum and Order.

Original Filed: Nov. 13, 1970.

In the United States District Court, Eastern District of California.

Salyer Land Company, a California corporation, C. Everette Salyer; Fred Salyer; Lawrence Ellison; and Harold Shawl, Plaintiffs, vs. Tulare Lake Basin Water Storage District, a public district, Defendant. Civil No. F-414.

Defendant's motion to dismiss was submitted on briefs without argument; C. Ray Robinson and Thomas Keister Greer, appearing for plaintiffs; and Ernest M. Clark and Robert M. Newell, appearing for defendant.

'Plaintiffs' action is authorized by Section 1983 of Title 42 of U. S. Code, and alleges that plaintiffs are being denied constitutional rights under color of State law, particularly sections 41000 and 41001 of the Water Code of California which permits only land-owners to vote, and give them one vote for each \$100 worth of land.

Plaintiffs complaint presents a substantial constitutional question as to whether the sections of the California Water Code are in conflict with the United States Constitution.

Therefore, defendant's motion to dismiss is denied and a three-judge court is ordered convened pursuant to 28 U.S.C. § 2284.

DATED: November 13, 1970.

M. D. CROCKER
United States District Judge

**Answer of Defendant, Tulare Lake Basin
Water Storage District.**

Filed December 14, 1970

[Caption omitted in printing]

Defendant, Tulare Lake Basin Water Storage District ("District"), for its answer to the Complaint herein alleges as follows:

1. Admits that plaintiffs purport to base the jurisdiction of this Court on the statutory provisions stated in paragraph I of the Complaint, but except as so admitted, denies each and every allegation in said paragraph contained.
2. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph II of the Complaint, except admits that plaintiff, Salyer Land Company, is a California corporation and that it owns and leases considerable acreage within the District which it farms.
3. Admits the allegations of paragraphs III, IV, V, VI, VII, VIII, IX, and XIII of the Complaint, and each of them, except denies knowledge or information sufficient to form a belief as to the truth of the following allegations: (1) that plaintiffs, C. Everette Salyer and Fred Salyer, are members of the Board of Directors of the District. In this connection, alleges that neither of said plaintiffs has attended any meeting of the Board, either a special meeting or a regular monthly meeting from and after March 4, 1969; and (2) that plaintiff, Lawrence Ellison, is a resident of the District or a registered voter. In this connection, alleges that defendant is informed and believes that plaintiff, Lawrence Ellison, is temporarily occupying a mobile home parked within the North Central Reclamation

District organized in 1924 under the Reclamation Law of the State of California which maintains the so-called North Central Levee which protects the lands of that District from flooding.

4. Denies the allegations contained in paragraph X of the Complaint, except admits that the J. G. Boswell Company is the largest landowner in the District and that, as a landowner, it has voted in elections held by the District pursuant to the California Water Storage District Law. Further admits that four of the eleven Directors of the District are employed by and receive compensation from J. G. Boswell Company. One additional Director of the eleven receives a nominal monthly consulting fee from the J. G. Boswell Company. Further admits that the President (one of the five Directors above mentioned), Vice President (one of the five Directors above mentioned) and Secretary of the District are stockholders of the J. G. Boswell Company and that the Secretary who is an attorney practicing law in Corcoran, California, is paid a small monthly retainer for his services.

5. Admits the allegations contained in paragraph XI of the Complaint, except denies knowledge or information sufficient to form a belief as to the precise number of separate landowners in each division of the District as of this date or the number of residents of the District. Admits that as of May 23, 1967, the number of landowners in each division was as alleged. In this connection, alleges that many landowners own parcels of approximately one acre each which are leased to large landowners and operators such as the Salyer Land Company, and many of these landowners have granted proxies to their lessees, permitting the lessees to vote for directors of their choice.

6. Denies each and every allegation contained in paragraphs XII, XIV, XV, XVI, XVII, XVIII, XIX, XX, and XXI, and each of them, except as hereinafter alleged:

The District encompasses approximately 193,000 acres in the Tulare Lake Basin, which is a closed depression, a sump with a bottom elevation of 175 feet and a top of about 195 feet. Water which flows down from the Sierra Nevada Mountains into the basin does not flow out. The principal tributaries bringing water to the basin are the Kings, Kaweah, Tule, and Kern Rivers. In some years the flow of water is large and a lake is formed in the basin. In other years the basin is relatively dry. At present, approximately 44,200 acres of some of the most productive land of the basin are under water and have been since the flood of 1969.

To control and distribute water, the landowners of the basin, either acting as individuals or through reclamation districts created under California law, have financed and constructed an intricate system of dikes and canals, and they have acquired water rights to provide water in dry years. Irrigation of the basin land is made possible by water derived from water rights held by the District, by water contracts executed by the District, by some landowners pumping from ground water, by some landowners' ownership of stock in mutual water companies holding water rights in Kings River, and by using any other water which flows into the basin and is capable of being controlled.

The water problems have in many years been controlled, resulting in successful crops. In other years, they have not. Because of the problems, the area is useful only for agriculture. It is essentially uninhab-

ited. The District provides no public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily operated and financed by a municipal body.

The District was formed by landowners in 1926 to assist them to farm the area. As required by law, the District was divided into eleven divisions so as to separate into separate divisions lands possessing the same general character of water rights or interests in the water of a common source (Water Code Section 39777). A director was elected by each division to represent that division (Water Code Section 39929). The franchise for the election of a director for each division is granted to landowners, resident and non-resident, corporate and individual, in proportion to the assessed value of land ownership (Water Code Section 41000 and Section 41001). No directors are elected at large to represent the District.

At the present time each of the eleven divisions is represented by a landowner or the representative of a landowner, and the terms of office for the following directors will terminate on the first Tuesday in March of 1971:

Cecil Howe	— Division 2
Fred Salyer	— Division 4
James B. Fisher	— Division 6
E. E. Anderson, Jr.	— Division 7
C. Everette Salyer	— Division 11

The sizes of the eleven districts are today different. Division 4, represented by plaintiff, Fred Salyer, contains approximately fifty-two sections of land; and Division 10, represented by A. L. Vandergriff, a Vice

President of J. G. Boswell Company, contains approximately thirteen and one-half sections. Division 11, represented by plaintiff, C. Everette Salyer, contains approximately ten and three-quarter sections. The assessed valuations of these three divisions were, respectively, \$2,047,620, \$624,840, and \$539,320.

The District is required to hold a general water storage district election on the first Tuesday in February of 1971 to choose a successor to each of the above named officers whose term expires (Water Code Section 41300). If by the fifty-ninth day prior to the election only one person has been nominated for the officer to be filled, or no one has been nominated, then the board may order that an election not be held for such office and request the Department of Water Resources to appoint such person as the Department shall select. (Water Code Section 41307).

The last election for directors for the divisions of the district was held on May 23, 1967, at which time eleven directors were selected, of which eight are still in office. Ed Howe, C. Everette Salyer, and James B. Fisher were subsequently appointed to fill vacancies by the Department of Water Resources upon the endorsement and recommendation of the Board then existing. At the election, Kings County Development Company, as a landowner and lessor to Salyer Land Company, cast its vote for Fred Salyer, a plaintiff in this action and a controlling shareholder of Salyer Land Company.

Since the formation of the District, it has never been redivisioned. Prior to July 1, 1965, the responsibility for any redivisioning rested with the Department of Public Works. On July 1, 1965, Section 41152 of the Water Code was amended to permit the Board to re-

division so that the divisions shall be as nearly equal to the number of holders of title to land entitled to vote in a general election as may be conveniently possible. On August 29, 1970, Section 41152 was repealed, and at this time there is no statutory provision concerned with redivisioning the District. No petition or application has ever been received by the Board seeking a redivisioning of the District.

The primary function of the officers of the District is to carry out the projects of the District which must be approved first by both a majority of landowners and landowners owning a majority of the assessed value of the entire District and then by the District Securities Commission of the State of California. The District has had only four projects in all of its history. Each of the District's projects dealt with water and related matters, including the storage, conservation and diversion of water, as to which the State of California has a compelling interest.

The first General District Project was approved by the voters of the District on December 6, 1927. This project contemplated the acquisition by the District of eighteen sections of land as a water storage reservoir, the return to the basin of waters flowing to the north in Kings River, levee and channel improvement, and the like. The estimated cost of the project was \$1,608,434.85. However, because of an adverse decision in the courts regarding the north flowing water and the depressed state of the economy, very little of this project was ever implemented.

General District Project No. 2 was approved by the voters on August 1, 1961. This project cancelled certain outmoded or uncompleted portions of Project No. 1. It also had as its purpose the establishment of rights

of the District to water in the Kings, Kaweah, Tule and Kern Rivers and participation in storage of water in the reservoirs on Pine Flat, Terminus, Success, and Isabella Rivers, respectively. The total cost of the project was estimated at \$2,720,000.00.

General District Project No. 3 was approved by the voters on September 15, 1964. It was really a modification complete in itself of General District Project No. 2. Its purpose was the establishment of water rights in and the participation in reservoir storage at the four rivers referred to in the preceding paragraph. The cost of this project was estimated at \$2,795,000.00.

General District Project No. 4 was approved by the voters on July 11, 1967. Its purpose was to fund the construction of two laterals from the California State Aqueduct to the basin for the purpose of transporting water purchased by the District from the State of California to the Tulare Lake Basin. This project also contemplated the construction of an office building for the district. The estimated cost of this project was \$1,800,000.00.

The two laterals have been constructed at a cost of approximately \$2,500,000.00. The construction of the office building has been deferred.

The District, on behalf of its landowners, has filed petitions with the office of Emergency Planning pursuant to Sections 1855 ff. of Title 42 of the United States Code, and in response to such petitions the United States has granted certain moneys to the District. Further, the District has intervened in that certain action pending in this Court entitled *United States v. Tulare Lake Canal Company*, in which the United States seeks to impose acreage limitations on waters released from storage behind Pine Flat Dam.

FIRST AFFIRMATIVE DEFENSE

7. The Complaint fails to state a cause over which a court of the United States has jurisdiction.

SECOND AFFIRMATIVE DEFENSE

8. Neither Section 41000, nor Section 41001, nor any other section of the California Water Storage District Law is unconstitutional or otherwise contrary to the law of the United States. Therefore, any claim of plaintiffs, or any of them, should be asserted in the courts of the State of California.

THIRD AFFIRMATIVE DEFENSE

9. On March 27, 1969, plaintiff Salyer Land Company commenced an action in the Superior Court of Kings County, State of California, entitled *Salyer Land Company v. Robinson, et al.*, being number 20056 in the files of said Court. Each of the defendants in said action is a director of the District, and the claim of the plaintiff in that action against said defendants is the same claim as asserted in the Complaint herein. Said action is still pending.

WHEREFORE, defendant prays that judgment be entered in its favor and against any claim of plaintiffs.

NEWELL & CHESTER

ROBERT M. NEWELL

DONNELLY, CLARK, CHASE &

HAACK

ERNEST M. CLARK, JR.

By /s/ Ernest M. Clark, Jr.

Ernest M. Clark, Jr.

Attorneys for Defendant.

[Affidavit of service omitted in printing]

Letter of Counsel to Clerk April 19, 1971.

Law Offices

THOMAS KEISTER GREER

Rocky Mount, Virginia 24151

The Clerk

United States District Court

Federal Building

1130 O Street

Fresno, California 93721

RE: *Salyer Land Company v. Tulare Lake
Basin Water Storage District*, USDC No.
No. F-414

Dear Sir:

28 U.S.C. Section 2284, dealing with procedure before three-judge courts, provides in part as follows:

"(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State."

The instant action involves the enforcement, operation and execution of State statutes, and notice of the trial now set for June 16, 17 and 18, 1971 should be given to the Governor and Attorney General of California.

I take it that you are the proper person to give this notice, from the later provision of Section 2284:

"Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof."

With kindest regards, I am

Sincerely,

Thomas Keister Greer

TKG/pf

cc: C. Ray Robinson, Esq.

Ernest M. Clark, Jr., Esq.

Robert M. Newell, Esq.

**Letter of Clerk to Governor and Attorney General
April 20, 1971.**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**Office of the Clerk
U.S. Court House
Fresno, California 93721**

**Gov. Ronald Reagan
Capitol Building
Sacramento, Calif.**

**Attorney General
State of California
500 Wells Fargo Building
Fifth St. & Capitol Mall
Sacramento, Calif. 95814**

Dear Sirs:

Re: F-414-Civ.

Salyer Land Co. vs. Tulare Lake Basin

Please be advised that the above-entitled action has been set for trial on June 16, 17 & 18, 1971 before a three-judge court.

You are being advised of this trial in compliance with 28 USC 2284 in which it is required that the Clerk shall give notice of such trial when State statutes are involved. Enclosed, for your information, is a copy of the memorandum and order of the Hon. M. D. Crocker in which the three-judge court has been ordered convened.

Yours truly,

**D. D. BUTLER
Deputy Clerk**

Letter From Court to Counsel May 10, 1971.

UNITED STATES DISTRICT COURT

Eastern District of California

Fresno, California 93721

Mr. C. Ray Robinson

Mr. Thomas K. Greer

Mr. Robert M. Newell

Mr. Ernest M. Clark

Gentlemen:

**Re: Salyer Land Co. v. Tulare Lake Basin
Water Storage District, No. F-414 Civ.**

Judge Browning has asked me to explore the possibilities of submitting this case to the three-judge court on an agreed statement of facts. In view of the request for admissions recently filed, I would appreciate an attempt by all counsel to agree on the facts.

Please advise me of your progress.

Very truly yours,

/s/ M. D. Crocker

M. D. CROCKER

cc Honorable James R. Browning

Honorable Robert H. Schnacke

Letter From Counsel for Amicus Curiae to Court

May 28, 1971.

Law Offices of

DOWNEY, BRAND, SEYMOUR & ROHWER

1007 Seventh Street

Sacramento, California 95814

Telephone 441-0131

The Honorable M. D. Crocker

Judge of the U. S. District Court

U. S. District Courthouse

1130 O Street

Fresno, California

Re: Salyer Land Company, et al. vs. Tulare

Lake Basin Water Storage District—No. F-414

Dear Judge Crocker:

As I told you on the telephone, we represent the California Central Valleys Flood Control Association, an association of reclamation districts in California. These districts all vote on the same basis as the defendant in this action, and accordingly the decision rendered herein will have drastic and far reaching effects upon all reclamation districts in California. Thus the Association hereby seeks the Court's permission to file an amicus Curiae brief in this action.

The Association has previously sought and obtained the consent of the parties to do so.

It is understood that the trial has been set for June 16, and if the Court's permission is obtained, the Association will have its brief filed as promptly thereafter as possible.

In the event the Court elects to permit us to file a brief herein, we enclose an Ex Parte Order for the Court's convenience.

Thank you very much for your attention.

Yours truly,

**DOWNEY, BRAND, SEYMOUR &
ROHWER**

By

Joseph S. Genshlea

JSG:sc

Enclosure

cc: **Donnelly, Clark, Chase & Haakh
Newell & Chester
C. Ray Robinson
Thomas Keister Greer**

Letter From Counsel to Court June 4, 1971.

Law Offices

NEWELL & CHESTER

650 South Grand Avenue—Suite 500

Los Angeles, California 90017

629-1231 Area Code 213

Honorable M. D. Crocker
United States District Court,
Eastern District of California
Fresno, California 93721

Re: Salyer Land Co. v. Tulare Lake Basin
Water Storage District—Civil No. F-414

Dear Judge Crocker:

In your letter of May 10, 1971 to all counsel you requested that we report on the progress made in attempting to agree on the facts in the captioned matter.

Mr. Clark and I have been conferring with Mr. Greer in the past few days toward reaching an agreement on the facts, reserving objections as to relevancy in accordance with your letter of June 1, 1971. I am pleased to report that we have made considerable progress in this regard.

Mr. Greer has delivered to the undersigned a draft statement of facts that the plaintiff proposes to place before the Court; in turn, we have given Mr. Greer a statement of facts that the defendant proposes to place before the Court. For the most part, we have been able to agree on all of the facts set forth in these statements.

Subject to the Court's approval, we suggest that each party file with the Court a statement of facts, reserving to the other side 48 hours within which to deny the accuracy of any specific fact. At the present time, we do not contemplate that there will be any denials of this type. These statements should be filed with the Court by Wednesday, June 9th, and any denials should be filed with the Court by Friday, June 11th.

It is also contemplated that we will have a joint schedule of exhibits, which schedule, together with the exhibits, will be delivered to Mr. Glover.

I have dictated this letter in the presence of Mr. Greer, with whom we have been meeting this past week.

Respectfully,

/s/ Robert M. Newell

Robert M. Newell

RMN:sr

cc: C. Ray Robinson, Esq.

Thomas Keister Greer, Esq.

Ernest M. Clark, Jr., Esq.

Letter From Court to Counsel June 7, 1971.

UNITED STATES DISTRICT COURT

Eastern District of California

Fresno, California 93721

Mr. Robert M. Newell

Attorney at Law

650 South Grand Ave. (Suite 500)

Los Angeles, California 90017

Dear Mr. Newell:

Re: Salyer Land Co. v. Tulare

Lake Basin Water Storage

District, No. F-414 Civ.

I agree with the procedure outlined in your letter of June 4, 1971.

Also, I wish to thank all counsel for cooperating with each other and the court.

Very truly yours,

M. D. CROCKER

cc C. Ray Robinson, Esq.

Thomas Keister Greer, Esq.

Ernest M. Clark, Jr., Esq.

Petition to Appear as Amicus Curiae.

Filed June 9, 1971

[Caption omitted in printing]

TO THE ABOVE ENTITLED COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:

DENSLOW GREEN, attorney at law, duly admitted to practice before the above entitled court, does petition the court to appear in the above entitled action on amicus curiae on behalf of the Irrigation Districts of the State of California, and in support thereof alleges as follows:

1. That the IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA is a non-profit California corporation whose members consist of over 250 districts engaged in the distribution of water throughout the State of California.

2. That said Association and its member districts are vitally concerned with the voting procedures presently adopted by state statute which limit or restrict the right to vote in special districts in connection with land ownership.

3. That one of the principal issues in the above entitled action to be determined by this court involves land ownership, voting qualifications and the application of the "one man, one vote" rule.

4. That it is to the best interests of the Association that its views, representing the view of most of the districts involved in water distribution in the State of California, be presented to this court to assist the court in making its determinations on the issues above set forth.

WHEREFORE, the undersigned prays that he be allowed to appear as amicus curiae in the above entitled action and to file such briefs therein as may be allowed by the court.

Dated: June 8, 1971.

/s/ Denslow Green
DENSLOW GREEN

The above petition having been duly filed and good cause appearing therefor,

IT IS HEREBY ORDERED that **DENSLOW GREEN** and he is hereby authorized to appear in the above entitled action as amicus curiae on behalf of the **IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA**.

Dated: June 9, 1971.

/s/ M. D. Crocker
M. D. CROCKER, Judge

PLAINTIFFS' STATEMENT OF FACTS.

Filed June 10, 1971.

Tulare Lake Basin Water Storage District, organized under the California Water Storage District Law in 1926, comprehends some 193,000 acres of land in Tulare Lake Basin, in Kings and Tulare Counties, California. Tulare Lake Basin is an intensively cultivated a very fertile farming area, the principal crops being cotton, barley and safflower.

The principal streams terminating in Tulare Lake Basin are the Kings, Tule, Kaweah and Kern Rivers. The United States has constructed dams on all four of these streams, Pine Flat on the Kings in 1954, Success on the Tule in 1961, Terminus on the Kaweah in 1961, and Isabella on the Kern in 1953. Because of these dams, in a "normal year" as defined by the engineer and hydrologists in the area, water does not flow into Tulare Lake. A "normal year" is defined as a "100 percent year" based upon engineering studies of stream flows throughout the years for which records are available. A year in which the runoff was half of normal would thus be referred to as a "50 percent year", and a year in which the runoff was twice normal would be referred to as a "200 per cent year". For example, 1971 is estimated to be a "65 percent year" on the Kings; there has been no flood inflow into Tulare Lake Basin in 1971. 1970 was a "79.5 percent year" on the Kings; there was no flood inflow into Tulare Lake Basin in 1970.

Since completion of the dams on the four major streams discharging into Tulare Lake, Pine Flat on the Kings, Success on the Tule, Terminus on the Kaweah, and Isabella on the Kern, there have been only two

years in which flood waters have entered Tulare Lake Basin. The first of these was the winter-spring of 1966-67, when a total of 169,752 acre feet of water entered Tulare Lake, which had been dry since 1959. The second of these was 1969, when the area experienced the greatest flood since 1906, and 1,169,900 acre feet of flood water entered Tulare Lake Basin. Water rose to the height of 192.5 U.S.G.S. datum, and approximately 88,000 acres of land out of the 193,000 acres in the district were flooded.

Evaporation and irrigation use have now reduced the flooded area to 27,000 acres. Approximately 300,000 acre feet of the water entering Tulare Lake Basin in 1969 was from the Kern River. This amount would have been reduced to approximately 100,000 acre feet had Buena Vista Lake been used for flood storage. Small floods such as those of 1967 are normally confined to the twelve sections spoken of as "the basin"; the aerial photograph dated May, 1967 [Ex. 1] shows water entering this twelve section area.

Tulare Lake Basin is divided into districts and areas by large levees, erected by various reclamation districts or by private landowners. The location of these levees is as shown on the map entitled "Tulare Lake Basin Topography" dated June, 1969 [Ex. 2]. A map showing the boundaries of the several reclamation districts in Tulare Lake Basin is Exhibit 3. The largest of these levees, the South Central Levee, the North Central Levee, the El Rico Levee, and the Consolidated Levee, have a height of approximately 196 feet U.S.G.S. datum, and they withstood the 1969 flood. In the 1969 flood the levee of Tulare Lake Reclamation District No. 749, which extends from the mouth of the Kings River along the north bank of the Tule river

for ten miles, was cut on February 25, 1969 to save the levee, and to provide for controlled rather than uncontrolled flooding of the lands protected by that levee. The Lovelace Levee failed on March 18, 1969.

The 1969 flood was the greatest runoff in the recorded history of the Kings, Kaweah, Tule and Kern Rivers. It was a 261.3 percent year on the Kings, a 356.9 percent year on the Kaweah, a 376 percent year on the Tule and a 451 percent year on the Kern. In 1969 water from the Kern River had not reached Tulare Lake Basin since 1952, which was prior to the completion of Isabella Dam on the Kern River. The location of Isabella reservoir and Buena Vista Lake are shown on the map "Kern River Service Areas" which is Exhibit 4.

The minutes of a meeting of the Board of Directors of Tulare Lake Basin Water Storage District held April 1, 1952, state in part as follows:

"Consulting Engineer Harding, in respect of conditions on Kern River during the current season, discussed with the Directors the protection that might be had against floods from that stream by the full use of Buena Vista Lake reservoir. He said that he understood the landowners in that area were planning to store considerable water in Buena Vista Lake and not to use the Lake area, in 1952, for farming. He thought that Tulare Lake Basin Water Storage District should keep watch on what was done there, to see that Buena Vista Lake was fully used to store water from Kern River, because under normal, natural conditions on Kern River a great deal of flood water from that River would flow into Buena Vista Lake. Finally, Director Stone moved and Director Salyer seconded

the motion, and the motion carried unanimously for the adoption of a resolution as follows:

"RESOLUTION

"RESOLVED: That the Engineers of Tulare Lake Basin Water Storage District be and they are hereby instructed to keep a careful watch on flood flows in Kern River during the current season to see that Buena Vista Lake takes the full amount of water which properly should flow into it and there be stored and that, if such storage does not appear to be taking place, the President of the District be and he is hereby authorized to write a letter in the name of Tulare Lake Basin Water Storage District, to Buena Vista Water Storage District and the owners of land in Buena Vista Lake informing them that Tulare Lake Basin Water Storage District and the owners of land within it insist that such storage of flood flows of Kern River shall be made in Buena Vista Lake and that if they are not made the responsible parties will be held liable for any damages which may arise in Tulare Lake Basin by the discharge into such Basin of waters which should have been stored in Buena Vista Lake."

The "consulting engineer Harding" referred to in these minutes was S. T. Harding, late Professor of Engineering at the University of California, an authority on water matters in the San Joaquin Valley, and a consultant to the defendant District from the time of its formation.

On April 1, 1952 the Board of Directors included, among others, L. T. Robinson, Albert Armor, F. G. Sherrill and James G. McCain. Pursuant to the resolu-

On April 1, 1952, Tulare Lake Basin Water Storage District gave Buena Vista Water Storage District and the owners of land in Buena Vista Lake written notice in accordance with the resolution above quoted, and the notices were acquiesced in by those receiving them. Buena Vista Lake, including Cell 3 thereof, was filled with the flood waters of the Kern River in 1952.

Tulare Lake Basin Water Storage District's letter of September 23, 1953 signed by Louis T. Robinson, its President, is Exhibit 5.

The J. G. Boswell Company began to farm Buena Vista Lake under a long term lease in 1956, and has farmed it ever since.

There was a meeting of the Board of Directors of the defendant district on March 4, 1969 with ten directors present, the eleventh director, the late Jack Gibson, being deceased.

At the meeting of March 4, 1969 Consolidated Reclamation District No. 812 presented the following resolution to the Board of Directors of Tulare Lake Basin Water Storage District:

"WHEREAS, the Corps of Engineers manual for Isabella Project contains as its criteria for flood control operation, provision for the flood waters of Kern River to flow into Buena Vista Lake to the extent of its inlet capacity for Schedule III releases, and to the extent of said Buena Vista Lake's inlet capacity for Schedule IV releases; and

WHEREAS, the said criteria for flood control operation provide that 'When there is a reasonable chance of having to make releases to Tulare Lake in the foreseeable future, adequate opportunity should be provided for filling Buena Vista Lake.',

NOW THEREFORE, BE IT RESOLVED, by the Board of Trustees of Consolidated Reclamation District No. 812, that this District calls upon the Board of Directors of Tulare Lake Basin Water Storage District to take action in the current flood emergency to protect the works and lands in Tulare Lake Basin from the flood waters of the Kern River, and to attempt by the requisite notices, and by legal action if necessary, to see to it that all of Buena Vista Lake be used to hold the flood waters of the Kern River to the full extent of that Lake's inlet capacity before such flood waters are turned north toward Tulare Lake.

BE IT FURTHER RESOLVED, that should the Board of Directors of Tulare Lake Basin Water Storage District fail or refuse to serve the requisite notices, and to file legal action if necessary, that each and every Director of Tulare Lake Basin Water Storage District be placed on notice that he owes a fiduciary obligation arising from the office held by such Director, and that Consolidated Reclamation District No. 812 will hold him personally and pecuniarily responsible for any and all damages sustained by this District as a result of such failure or refusal to act."

At the meeting of March 4, 1969 North Central Consolidated Reclamation District No. 2071 presented the following resolution to the Board of Directors of Tulare Lake Basin Water Storage District:

WHEREAS, the Corps of Engineers manual for Isabella Projects contains as its criteria for flood control operation provision for the flood waters of Kern River to flow into Buena Vista Lake to the extent of its inlet capacity for Schedule III re-

leases and to the extent of said Buena Vista Lake's inlet capacity for Schedule IV releases; and

WHEREAS, the said criteria for flood control operation provide that "When there is a reasonable chance of having to make releases to Tulare Lake in the foreseeable future, adequate opportunity should be provided for filling Buena Vista Lake."

NOW THEREFORE, BE IT RESOLVED, by the Board of Trustees of North Central Consolidated Reclamation District No. 2071, that this District calls upon the Board of Directors of Tulare Lake Basin Water Storage District to take action in the current flood emergency to protect the works and lands in Tulare Lake Basin from the flood waters of the Kern River, and to attempt by the requisite notices, and by legal action if necessary, to see to it that all of Buena Vista Lake be used to hold the flood waters of the Kern River to the full extent of that Lake's inlet capacity before such flood waters are turned north toward Tulare Lake.

BE IT FURTHER RESOLVED, that should the Board of Directors of Tulare Lake Basin Water Storage District fail or refuse to serve the requisite notices, and to file action if necessary, that each and every Director of said Tulare Lake Basin Water Storage District be placed on notice that he owes a fiduciary obligation arising from the office held by such Director, and that North Central Consolidated Reclamation District No. 2071 will hold him personally and pecuniarily responsible for any and all damages sustained by this District as a result of such failure or refusal to act.

At the meeting of March 4, 1969 Wilbur Reclamation District No. 825 presented the following resolution to the Board of Directors of Tulare Lake Basin Water Storage District:

WHEREAS, a flood emergency does now exist endangering the levees, works and lands of this District, and an intensification of the flood emergency is imminently threatened by the projected flows of flood waters from the Kern River; and

WHEREAS, this District, acting under authority of law and of its By-Laws, should take all feasible action to reduce or to eliminate the threatened flow of Kern River flood waters into the area of the Tulare Lake Basin Water Storage District wherein the levees, works and lands of this District are also located, and being now fully advised,

BE IT RESOLVED: That this District make immediate demand that the directors, officers, attorneys and all other appropriate officials of the said Tulare Lake Basin Water Storage District take all necessary steps (including but not limited to such action at law as may be necessary) to insure that said waters of the Kern River are ponded in Buena Vista Lake, to its full capacity, before any such flood waters be allowed to flow northward from Buena Vista Lake toward the Tulare Lake Basin; and

BE IT FURTHER RESOLVED: That the President and all other officers of the W. H. Wilbur Reclamation District No. 825, be, and they hereby are, authorized and directed to take such further actions as may be expedient or necessary,

in the opinion of the President and the said further officers of this District, to implement the intent and purposes of these Resolutions.

At the meeting of March 4, 1969 Director Everette Salyer moved the following resolution:

"WHEREAS, the Corps of Engineers' Criteria for Flood Control Operation of Isabella Project, as issued 17 March 1953 and revised 27 September 1954, provide for the flood flows of the Kern River to enter Buena Vista Lake to the extent of its inlet capacity for both Schedule III and Schedule IV releases, and further provide that 'When there is a reasonable chance of having to make releases to Tulare Lake in the foreseeable future, adequate opportunity should be provided for filling Buena Vista Lake';

NOW THEREFORE, BE IT RESOLVED:

1. That Tulare Lake Basin Water Storage District serve a demand on the owners and operators of Buena Vista Lake, and on Buena Vista Water Storage District, that the flood waters of the Kern River be introduced into Buena Vista Lake, including Cell 3, thereof, in accordance with the Corps of Engineers' Criteria for Flood-Control Operation of Isabella Project.

2. That Tulare Lake Basin Water Storage District forthwith employ counsel to seek injunctive relief against the owners and operators of Buena Vista Lake, and against Buena Vista Water Storage District, should said demand not be immediately complied with."

Director E. E. Anderson, Jr., who was an officer of South Lake Farms and of Producers Cotton Oil Company, seconded the motion.

Thereupon J. G. Boswell Company vice president Leonard L. Evers moved to table the resolution, and J. G. Boswell Company vice president A. L. Vandergriff seconded the motion.

With further reference to the meeting of March 4, 1969,

(a) A copy of the minutes of said meeting has been marked as Exhibit 6.

(b) Erling Kloster, Esq. appeared at that meeting representing J. G. Boswell Company.

(c) On page 15 of the minutes appears the following statement:

"Attorney Kloster at this point made disclosures for the record as to the association of six of the directors with the J. G. Boswell Company indicating in some detail their stock ownership and employee affiliations. The six directors were Armor, Barnes, Evers, Fisher, Robinson and Vandergriff. He stated further that he had advised these directors they were not disqualified to vote with references to the Buena Vista matter."

The disclosures that Mr. Kloster made were as follows:

(i) That Louis T. Robinson, the Chairman of the Board was a former employee of the J. G. Boswell Company, a present shareholder and that he continue to participate in certain of the company's retirement benefits.

(ii) That Albert Armor was a former employee of the J. G. Boswell Company, that he had a personal family relationship with J. G. Boswell II, president of the company, and that he was "still an employee in the sense of being employed on a consulting basis at a rather minor monthly retainer."

(iii) That Stanley M. Barnes was a full time salaried employee of the J. G. Boswell Company, and a shareholder.

(iv) That A. L. Vandergriff was a vice president of the J. G. Boswell Company, and a stockholder.

(v) That Leonard L. Evers was a vice president of the J. G. Boswell Company, a director thereof, and a shareholder.

(vi) That James B. Fisher was an employee of the J. G. Boswell Company, and a shareholder.

The vote on the motion to table was 6-4, with each of the non-Boswell directors voting not to table, and with each of the directors as to whom disclosure was made of relationship with the J. G. Boswell Company voting to table. Cell 3 of Buena Vista Lake, the subject of the controversy, is approximately 70 percent of the land area of that lake, and approximately 85 percent of its storage capacity. No flood water entered Cell 3 in 1969.

Plaintiffs Everett and Fred Salyer objected to the six Boswell directors voting on the Buena Vista Lake issue, and took the position that they were disqualified to vote because of a conflict of interest. Said plaintiffs pointed out that when the same issue had arisen at an earlier time, on May 15, 1967, Fred G. Sherrill, a Boswell vice president, who was at the time a director

of Tulare Lake Basin Water Storage District, had written the following letter:

"May 10, 1967

"Mr. Louis T. Robinson

President

Tulare Lake Basin Water Storage District

1107 Norboe

Corcoran, California

Dear Louis,

As far as I can see at this time, circumstances make it impossible for me to attend the adjourned meeting on Monday, May 15 to consider the matter presented by Director Everette Salyer at the conclusion of the meeting on May 2nd.

I would like the record to show, however, that if present, I would have to disqualify myself from voting as a Director on this question.

Your very truly,

/s/ FRED G. SHERRILL

Fred G. Sherrill"

These plaintiffs also pointed out that the other members of the board of said Tulare Lake Basin Water Storage District who were direct Boswell employees, had disqualified themselves on May 15, 1967. One of said Boswell employees who so disqualified himself on the earlier date was Stanley M. Barnes.

Louis T. Robinson, president of Tulare Lake Basin Water Storage District since about 1945, came to California from Greensboro, Georgia, the original home of the late Colonel J. G. Boswell, founder of the J. G.

Boswell Company. From August, 1925 to August, 1951, Mr. Robinson was manager of the San Joaquin Valley for the J. G. Boswell Company. Until he retired in 1951 Mr. Robinson was a director of the J. G. Boswell Company. Since his retirement Mr. Robinson has received retirement income from the J. G. Boswell Company retirement fund and has from time to time acted as a consultant to the J. G. Boswell Company. He now represents the interest of the Boston Ranch Company, a subsidiary of the J. G. Boswell Company on the board of directors of Westlands Water District, and is a partner in Peterson Farms, in which the J. G. Boswell Company and others are partners. Mr. Robinson represents Division 5 of Tulare Lake Basin Water Storage District, and in connection therewith gave deposition testimony in the case of *Salzer Land Company v. Tulare Lake Basin Water Storage District* on July 20, 1967 as follows:

"Q. Mr. Robinson, you are familiar with the method by which directors are chosen in water storage districts, aren't you?

A. Yes, I am.

Q. And you are familiar with the method by which assessed valuation of land is the criterion by which the number of votes may be allocated?

A. Yes, I am.

Q. Now you are familiar I take it with the, or generally familiar at least, with the landholdings of the J. G. Boswell Company?

A. Yes.

Q. Does the J. G. Boswell Company hold enough land in Division 5 to in effect elect whomever they wish to that post?

A. In my opinion, they do."

Albert Armor is also from Greensboro, Georgia, and is a first cousin of J. G. Boswell II, the present president of the J. G. Boswell Company. Mr. Armor until his resignation at the April 6, 1971 meeting of the district, represented Division 8 thereof. In the course of the deposition above referred to Louis T. Robinson was asked the following question, to which he gave the following answer:

"Q. Would it be correct to state that since the acquisition by the J. G. Boswell Company of Crocket and Gambogy—Mr. Reporter, C-r-o-c-k-e-t, G-a-m-b-o-g-y—that since acquisition of Crocket and Gambogy by the J. G. Boswell Company, that the Boswell Company has been in position to control Division 8?

A. That would be my opinion."

On March 27, 1969 Salyer Land Company filed an action in the Superior Court of the State of California in and for the County of Kings to remove directors Robinson, Barnes, Evers, Armor, Fisher, and Vandergriff. An order was issued that the defendants show cause why they should not be removed, there were a number of hearings on demurrers and motions to strike, and the case has been under submission on demurrers since October, 1969. All the pleadings, briefs, and orders in that case have been collectively marked as Exhibit 7.

On October 4, 1965 Tulare Lake Basin Water Storage District filed a motion for leave to intervene in the case of *United States v. Tulare Lake Canal Company*, No. ND 1483, the litigation to determine applicability of the acreage restrictions of federal reclamation law to the lands in the Kings River service area. In its

papers for such intervention, Tulare Lake Basin Water Storage District stated in part as follows:

"It would appear appropriate that Tulare Lake Basin Water Storage District, as the public agency most clearly concerned with the water rights of Tulare Lake Basin, be granted leave to intervene, in the nature of the right of *parens patriae*, to speak for and assert the interest of Tulare Lake Basin."

The motion for leave to intervene was granted by this Court by order dated January 27, 1966, and the district has participated in the litigation, which was recently tried, since that period.

In about the month of April 1967 counsel for Salyer Land Company inquired of James G. McCain, Esq. whether the District had ever been redivisioned in accordance with then section 41152 of the California Water Code. Mr. McCain replied as follows:

"May 4, 1967

T. Keister Greer, Esq.

Attorney at Law

c/o Salyer Land Company

P.O. Box 488

Corcoran, California 93212

Dear Tom:

In accordance with your request you are informed that Mr. Hadsell advises there has been redivision of the District in accordance with Section 41152.

Very truly yours,

/s/ Jim

James G. McCain

JGM/gh

cc: Dan Hadsell, Esq.

Attorney at Law

3130 Lewiston Avenue

Berkeley, California 94705"

At the time the late Mr. Hadsell was Secretary of the District and counsel for it.

Mr. Hadsell's deposition was taken by counsel for Salyer Land Company in the case of *Salyer Land Company, et al. v. Tulare Lake Basin Water Storage District*, the entire record in which case is being marked as Exhibit 8, on July 20, 1967. In the course of that deposition Mr. Hadsell was asked the following question and made the following reply:

"Q. Can you tell us, Mr. Hadsell, why Tulare Lake Basin Water Storage District has not been at any time since the formation of the District redivisioned in accordance with the provisions of Section 41152 of the Water Code of the State of California?

A. No."

The deposition of Louis T. Robinson, President of the defendant District was taken in the said case of *Salyer Land Company, et al. v. Tulare Lake Basin Water Storage District* on July 20, 1967. He was asked the following questions and made the following replies:

"Q. Did you hear my question this morning to Mr. Hadsell directed to whether or not there had been a redivisioning of Tulare Lake Basin Water Storage District?

A. Yes, I did.

MR. LUCAS: Three and a half days during which Mr. Hadsell's deposition was taken.

MR. GREER: All right. Q. I am unable to state verbatim what Mr. Hadsell's reply was and so I won't attempt to, but I would like to ask you the same question: Has there been any redivision of Tulare Lake Basin Water Storage District to the best of your knowledge?

A. Not to the best of my knowledge.

Q. Has the subject been discussed in your presence?

MR. LUCAS: When?

MR. GREER: At any time.

MR. LUCAS: At any time up until today?

MR. GREER: Well, I am not going to ask him about talking to you about it, but let's say has it been discussed in your presence at any time prior to the filing of the present lawsuit?

A. I don't recall any discussion within the Board of Directors.

Q. Well, discussion within or without the Board of Directors?

A. I don't recall my specific discussion but I know of the fact that there had been no redivision, no redivision of the District.

Q. Do you recall my asking Mr. Hadsell this morning or directing his attention to the disparity in size between Division 4, and, for example, I think we said Division 10?

A. Yes, I did.

Q. Do you see that disparity in area yourself?

A. Yes, I do.

Q. Do you recall my asking Mr. Hadsell about the disparity in assessed valuation between Division 4 and certain of the other divisions?

A. Yes, I remember that.

Q. I draw your attention, for example, to the fact that the assessed valuation represented by Mr. Fred Salyer of something in excess of two million dollars is more than four times the assessed valuation, for example, of Division 7?

A. That's correct.

Q. Is that correct?

A. That's correct.

Q. And is considerably greater than the assessed valuation of any other division?

MR. LUCAS: That doesn't have any exhibit number, but let the record show you are directing the witness' attention to an exhibit.

MR. GREER: Yes, it has been marked for identification and I will get the one which has the number on it.

MR. FRED SALYER: No. 58.

MR. GREER: No. 58. The paper that the witness is using is a copy of the exhibit which I made available to you gentlemen this morning, is that correct?

MR. LUCAS: It appears to be, yes. I just don't have the exhibit. Where as the exhibits?

MR. GREER: Q. Mr. Robinson, let me have that one back and I will show you the one, the copy, which is marked with an exhibit number, being Plaintiff's 58, and I draw your attention again to the disparity in assessed valuation between Division 4 and the other divisions.

MR. LUCAS: Between Division 4 and all other divisions?

MR. GREER: Q. Well, let me put it to you this way, Mr. Robinson. What appears to be the assessed valuation of Division 1?

A. \$774,420.

Q. What appears to be the assessed valuation in Division 2?

A. 850,622.

Q. What appears to be the assessed valuation of Division 3?

A. 955,750.

Q. What appears to be the assessed valuation of Division 5?

A. 2,047,620.

Q. No. I said Division 5, sir.

A. Five, sorry. 1,472,505.

Q. What appears to be the assessed valuation of Division 6?

A. 862,140.

Q. What appears to be the assessed valuation of Division 7?

A. 448,210.

Q. Of Division 8?

A. 697,490.

Q. Division 9?

A. 619,100.

Q. Of Division 10?

A. 624,840.

Q. Of Division 11?

A. 539,320.

Q. So it would be correct, Mr. Robinson, to say that Mr. Fred Salyer in representing Division

14, and what shows there as the assessed valuation of Division 4?

A. 2,047,620.

Q. —is representing more than twice as much the assessed valuation of Division 1, more than twice as much assessed valuation of Divisions 2, 3, 6, 7, 8, 9, 10 and 11, wouldn't it?

A. That's correct.

Q. The assessed valuation of your division appears to be \$1,472,505?

A. That's correct.

Q. Can you tell us, Mr. Robinson, why it is that this disparity has been allowed to continue?

A. I cannot."

The last election held in Tulare Lake Basin Water Storage District was a special election called by Salyer Land Company and others. It was held May 23, 1967. The voting list prepared for that election is Exhibit 9. The location and size of the eleven divisions in Tulare Lake Basin Water Storage District are as shown on the map marked as Exhibit 10. Although that map is marked "Preliminary, Subject to Revision", it is adequate for the purpose of defining the division lines in the District.

The assessed valuation of the lands in these divisions at the time of the special election in 1967 were as stated in Louis T. Robinson's deposition testimony as above quoted. Some of these lands have been reassessed, and the assessed valuations of the lands in each division are today as follows:

DIVISION NO.	ASSESSED VALUATION
1	\$1,039,705
2	1,358,550
3	974,530
4	1,954,547
5	1,342,417
6	869,160
7	917,250
8	767,675
9	797,040
10	688,425
11	620,990

Division 1 is today represented on the Board of Directors by Ed H. Howe, Division 2 by Ceil W. Howe, Division 3 by Leonard L. Evers, Division 4 by Fred Salyer, Division 5 by Louis T. Robinson, Division 6 by James B. Fisher, Division 7 by Edwin E. Anderson, Jr., and Division 8 was represented by Albert Amor until April 5, 1971, on which date Mr. Amor resigned. The Board has adopted a resolution on a successor but the Department of Water Resources has not as yet appointed such successor. Division 9 is represented by Stanley M. Barnes, Division 10 by A. L. Vandergriff, and Division 11 by C. Everett Salyer.

The pattern of farming operations in Tulare Lake Basin Water Storage District is as shown on the map marked as Exhibit 11. The pattern of farming in the District is also shown in the Schedule of Water Allocation to the several operators in the District, which schedule is Exhibit 12. From this schedule it appears that the J. G. Boswell Company farms approximately 40.60 percent of the land in the District. Salyer Land

Company farms approximately 15.19 percent of the land in the District. South Lake Farms farms approximately 13.13 percent of the land in the District and Westlake Farms farms approximately 15.72 percent of the land therein. These four corporations alone farm almost 85 percent of the land in the District.

There has been no general water storage district election in Tulare Lake Basin Water Storage District since 1947. Other than the special election of May 23, 1967 there has been no election of directors at all since 1947.

Plaintiffs C. Everette Salyer and Fred Salyer are president and vice president of Salyer Land Company, are landowners in the District in their individual capacities, and are directors of Tulare Lake Basin Water Storage District. They declined to attend meetings of the Board of Directors of the District after the meeting of March 4, 1969 until March 2, 1971, upon the advice of counsel.

Lawrence Ellison is 62 and has been in the Tulare Lake area for forty years. He attended the University of Redlands, was for many years Superintendent of Crocket and Gambogy, a large farming operation in the District which was acquired in 1956 by the J. G. Boswell Company, and from 1956 to 1969 held a responsible position with the J. G. Boswell Company. He lost his position with the Boswell Company because of reductions occasioned by the 1969 flood, and worked during the 1969 flood as Levee Supervisor for Consolidated Reclamation District. He is a resident of the District, but is not a landowner, and cannot vote therein. He is a registered voter. Ellison takes an interest in water matters, is on the mailing list of several publications concerning water and water problems in

California, and he reads these publications. He would like to vote in District elections.

Plaintiff Harold Shawl is 61, a certified professional engineer, a graduate of the University of California and has had forty years experience in water matters in the Tulare Lake area. He owns a one-half interest in 65 acres of land in the District.

The budget of the District for 1970 was \$481,000; in 1971 it was \$405,000. The budgets for the District for 1970 and 1971 have been collectively marked as Exhibit 13.

The water rights of Tulare Lake Basin Water Storage District, for example, its water right in the Kings River as stated in the Kings River Schedule, and its water right derived from its contract with the state of California, are for the equal benefit of the lands in the District. That is to say, there are no gradations or priorities within the District as to District water.

On February 20, 1969 the Attorney General of California acting through Deputy Attorney General Richard I. Gilbert, wrote the letter which is Exhibit 14. The said letter, which concludes that water storage districts are public subdivisions of the State, was submitted by Tulare Lake Basin Water Storage District to the United States as part of an application by defendant for federal moneys, and \$234,512.24 in federal funds was paid to defendant district pursuant to that application. The said application was for a federal disaster grant, for assistance in connection with damages occasioned by the 1969 flood.

On May 19, 1967, President Louis T. Robinson of Tulare Lake Basin Water Storage District was in San Francisco at a meeting of the California District Se-

curities Commission concerned with Project 4 of that District. In response to a suggestion that the Commission defer action until after the special election then scheduled for May 23, 1967 Mr. Robinson stated to the Commission as follows:

"MR. ROBINSON: I know you shouldn't forecast elections and that causes me a little hesitancy to say what I am going to say.

The eleven divisions in this large farming operation are completely controlled. You are going to have the same eleven directors on Tuesday that you have got today—with one exception. One of the directors is having some health trouble and he is going to be replaced; but other than that, they are going to be the same eleven directors."

* * *

"MR. ROBINSON: Well, I have no concern about the election.

But suddenly if a new board of directors were to come in, why then I would have nothing but opinion. But I have no concern about the election.

The eleven divisions are controlled by people with enough votes to put back the same directors they have now—including the two Salyers that are dissenting at this time. They will be returned; the other nine will be returned."

The pictures of the homes in Tulare Lake Basin Water Storage District collectively marked as Exhibit 15 are genuine.

There are some small farmers in the District who lease the land they farm. One of these is Marion Harris, who leases the North half and the Southwest quarter of Section 17, Township 23 South, Range 23 East, M.D.B. & M. Mr. Harris, although a farming operator in the District, is not entitled to vote therein. Another farmer who leases but does not own the land cultivated by him is Ronnie Harris, who farms the North half of Section 20, Township 23 South, Range 23 East, M.D.B. & M. Ronnie Harris is not permitted to vote in District elections. Malcolm Powers leases the North half of Section 3, Township 23 South, Range 19 East, M.D.B. & M. He also is not entitled to vote in District elections.

The following persons live in Tulare Lake Basin Water Storage District:

**RESIDENTS WITHIN BOUNDARIES OF
TULARE LAKE BASIN WATER STORAGE DISTRICT**

Section 1-21-19

Mr. and Mrs. Theodore F. Dragoo	2
Mr. and Mrs. Ruperto H. Escalera and three children	5
Mr. and Mrs. Thomas J. Parrish	2
Mr. and Mrs. Kenneth G. Rider and two children	4
Mr. and Mrs. Tony O. Jiminez and two children	4
Mr. and Mrs. Martin L. Dunham	2
Mr. and Mrs. William E. Spangler	2
Mr. and Mrs. Perry Hixon	2
Mr. and Mrs. M. S. Spencer and one child	3
Mr. and Mrs. Martin Molina and two children	4

Section 1-21-19 (continued)

Mr. and Mrs. Richard W. Koontz and one child	3
Mr. and Mrs. Donald M. Langdon	2
Mr. and Mrs. John P. Warren and two children	4
	<hr/> 39

Section 7-22-19

Mr. and Mrs. W. W. Davin	2
Mr. and Mrs. H. W. Bentley and two children	4
	<hr/> 6

Section 11-21-19

Mr. and Mrs. Cecil W. Howe	2
Mr. and Mrs. Cecil W. Howe, Jr. and one child	3
Mr. and Mrs. Ed H. Howe and two children	4
Mr. M. O. Reed	1
	<hr/> 10

South Ranch Headquarters

Star Route, Box 11, Stratford, California 93266

Mr. Lupe Martinez	1
Mr. Alex Jimenez	1
Mr. Luiz Rameriz	1
Mr. Jesus Hildago	1
Mr. Jose Medina	1
Mr. Jorge Salazar	1
Mr. Salvador Avila	1
Mr. Noe C. Sotela	1
Mr. Cresencio Hara Resa	1
Mr. Jose E. Quinones	1
Mr. Bob Gibson, Jr.	1
Mr. Ruben Avilia	1
	<hr/> 12

Section 1-22-21

Mr. and Mrs. Chris LeMay	2
	<hr/> 2

Section 13-23-21	
Mr. and Mrs. Wayne Pendola	2
Mr. and Mrs. Ted A. Brien	<u>2</u>
	4
Section 9-23-20	
Mr. and Mrs. Dale Frey	2
Mr. and Mrs. Hamil Saylor	<u>2</u>
	4
Section 19-21-20	
Mr. Lawrence Ellison	1
	<u>1</u>
TOTAL RESIDENTS WITHIN BOUNDARIES	78

None of these persons are permitted to vote in Tulare Lake Basin Water Storage District elections, except for the Howes through their ownership of Westlake Farms.

Plaintiffs' List of Exhibits:

Filed June 10, 1971

Exhibit No. 1—Aerial photograph of Tulare Lake Basin dated May, 1967.

Exhibit No. 2—Map entitled "Tulare Lake Basin Topography" prepared by Joseph B. Summers.

Exhibit No. 3—Map entitled "Tulare Lake Basin Topography" prepared by Roy L. May, showing boundaries of reclamation districts.

Exhibit No. 4—Map entitled "Kern River Service Areas", showing the location of Cells 1, 2 and 3 of Buena Vista Lake.

Exhibit No. 5—Tulare Lake Basin Water Storage District letter of September 23, 1953, signed by Louis T. Robinson.

Exhibit No. 6—Minutes of meeting of Board of Directors of Tulare Lake Basin Water Storage District held March 4, 1969.

Exhibit No. 7—Entire record in *Salyer Land Company v. Louis T. Robinson, et al.* filed March 27, 1969.

Exhibit No. 8—Complaint, stipulation and judgment in case of *Salyer Land Company, et al. vs. Tulare Lake Basin Water Storage District*, 1967.

Exhibit No. 9—Voting list of special election May 23, 1967, Tulare Lake Basin Water Storage District.

Exhibit No. 10—Division map of Tulare Lake Basin Water Storage District, showing assessed valuation of each division, and the director representing each division.

Exhibit No. 11—Farmer Operation map, Tulare Lake Basin Water Storage District.

Exhibit No. 12—1961 schedule of water allocation, Tulare Lake Basin Water Storage District.

Exhibit No. 13—Budgets of Tulare Lake Basin Water Storage District for 1970 and 1971.

Exhibit No. 14—Letter from office of the Attorney General, State of California, dated February 20, 1969.

Exhibit No. 15—Eighteen photographs of residences in Tulare Lake Basin Water Storage District.



FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

PLAINTIFFS' EXHIBIT 12.

SCHEDULE OF WATER ALLOCATION TO WATER USERS OF TULARE LAKE BASIN WATER STORAGE DISTRICT 1971

<u>Operator</u>	<u>Allocated Acreage</u>	<u>Percent</u>
J. G. Boswell Co.	76,501.43	40.638
Boyett Farming Co.	320.00	0.170
John Dunlop Farms, Inc.	704.32	0.374
Gilkey Farms, Inc.	1,178.83	0.626
Harp & Hansen	1,849.59	0.983
Kern River Delta Farms	3,183.11	1.691
J. B. Long	1,539.29	0.818
Newton Bros.	2,823.66	1.500
Peterson Farms	1,827.76	0.971
R. A. Rowan & Co.	2,958.95	1.572
Salzer Land Co.	28,606.14	15.196
San Joaquin Cotton Oil Co.	560.00	0.297
Schwartz Farms	3,815.20	2.026
South Lake Farms	24,721.41	13.132
Squire, F. Ronald	333.00	.177
Westlake Farms	29,604.42	15.726
Misc.—Kings County	4,795.11	2.547
Misc.—Tulare County	2,930.56	1.536
Total	<u>188,252.78</u>	<u>100.000</u>

PLANTING EXHIBIT 11

WATER RESOURCES OF TULARE LAKE
 TULARE WATER STORAGE DISTRICT
 1971

Planting	Water	Planting
40.838	16.50143	1. 1st Planting Co.
0.170	330.00	2. 2nd Planting Co.
0.374	104.33	3. 3rd Planting Co.
0.038	1.110.33	4. 4th Planting Co.
0.033	1.049.38	5. 5th Planting Co.
1.831	1.183.11	6. 6th Planting Co.
0.818	1.330.30	7. 7th Planting Co.
1.300	1.333.60	8. 8th Planting Co.
0.371	1.333.30	9. 9th Planting Co.
1.333	1.333.33	10. 10th Planting Co.
1.333	1.333.33	11. 11th Planting Co.
0.333	1.333.33	12. 12th Planting Co.
1.333	1.333.33	13. 13th Planting Co.
1.333	1.333.33	14. 14th Planting Co.
1.333	1.333.33	15. 15th Planting Co.
1.333	1.333.33	16. 16th Planting Co.
1.333	1.333.33	17. 17th Planting Co.
1.333	1.333.33	18. 18th Planting Co.
1.333	1.333.33	19. 19th Planting Co.
1.333	1.333.33	20. 20th Planting Co.
1.333	1.333.33	21. 21st Planting Co.
1.333	1.333.33	22. 22nd Planting Co.
1.333	1.333.33	23. 23rd Planting Co.
1.333	1.333.33	24. 24th Planting Co.
1.333	1.333.33	25. 25th Planting Co.
1.333	1.333.33	26. 26th Planting Co.
1.333	1.333.33	27. 27th Planting Co.
1.333	1.333.33	28. 28th Planting Co.
1.333	1.333.33	29. 29th Planting Co.
1.333	1.333.33	30. 30th Planting Co.
1.333	1.333.33	31. 31st Planting Co.
1.333	1.333.33	32. 32nd Planting Co.
1.333	1.333.33	33. 33rd Planting Co.
1.333	1.333.33	34. 34th Planting Co.
1.333	1.333.33	35. 35th Planting Co.
1.333	1.333.33	36. 36th Planting Co.
1.333	1.333.33	37. 37th Planting Co.
1.333	1.333.33	38. 38th Planting Co.
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1.333	1.333.33	41. 41st Planting Co.
1.333	1.333.33	42. 42nd Planting Co.
1.333	1.333.33	43. 43rd Planting Co.
1.333	1.333.33	44. 44th Planting Co.
1.333	1.333.33	45. 45th Planting Co.
1.333	1.333.33	46. 46th Planting Co.
1.333	1.333.33	47. 47th Planting Co.
1.333	1.333.33	48. 48th Planting Co.
1.333	1.333.33	49. 49th Planting Co.
1.333	1.333.33	50. 50th Planting Co.
1.333	1.333.33	51. 51st Planting Co.
1.333	1.333.33	52. 52nd Planting Co.
1.333	1.333.33	53. 53rd Planting Co.
1.333	1.333.33	54. 54th Planting Co.
1.333	1.333.33	55. 55th Planting Co.
1.333	1.333.33	56. 56th Planting Co.
1.333	1.333.33	57. 57th Planting Co.
1.333	1.333.33	58. 58th Planting Co.
1.333	1.333.33	59. 59th Planting Co.
1.333	1.333.33	60. 60th Planting Co.
1.333	1.333.33	61. 61st Planting Co.
1.333	1.333.33	62. 62nd Planting Co.
1.333	1.333.33	63. 63rd Planting Co.
1.333	1.333.33	64. 64th Planting Co.
1.333	1.333.33	65. 65th Planting Co.
1.333	1.333.33	66. 66th Planting Co.
1.333	1.333.33	67. 67th Planting Co.
1.333	1.333.33	68. 68th Planting Co.
1.333	1.333.33	69. 69th Planting Co.
1.333	1.333.33	70. 70th Planting Co.
1.333	1.333.33	71. 71st Planting Co.
1.333	1.333.33	72. 72nd Planting Co.
1.333	1.333.33	73. 73rd Planting Co.
1.333	1.333.33	74. 74th Planting Co.
1.333	1.333.33	75. 75th Planting Co.
1.333	1.333.33	76. 76th Planting Co.
1.333	1.333.33	77. 77th Planting Co.
1.333	1.333.33	78. 78th Planting Co.
1.333	1.333.33	79. 79th Planting Co.
1.333	1.333.33	80. 80th Planting Co.
1.333	1.333.33	81. 81st Planting Co.
1.333	1.333.33	82. 82nd Planting Co.
1.333	1.333.33	83. 83rd Planting Co.
1.333	1.333.33	84. 84th Planting Co.
1.333	1.333.33	85. 85th Planting Co.
1.333	1.333.33	86. 86th Planting Co.
1.333	1.333.33	87. 87th Planting Co.
1.333	1.333.33	88. 88th Planting Co.
1.333	1.333.33	89. 89th Planting Co.
1.333	1.333.33	90. 90th Planting Co.
1.333	1.333.33	91. 91st Planting Co.
1.333	1.333.33	92. 92nd Planting Co.
1.333	1.333.33	93. 93rd Planting Co.
1.333	1.333.33	94. 94th Planting Co.
1.333	1.333.33	95. 95th Planting Co.
1.333	1.333.33	96. 96th Planting Co.
1.333	1.333.33	97. 97th Planting Co.
1.333	1.333.33	98. 98th Planting Co.
1.333	1.333.33	99. 99th Planting Co.
1.333	1.333.33	100. 100th Planting Co.

DEFENDANT'S STATEMENT OF FACTS:

Filed June 10, 1971

The Tulare Lake Basin Water Storage District was formed on September 19, 1926 in accordance with the California Water Storage District Act of 1921, approved June 3, 1921. Statutes of California for 1921 at page 1727. (For the convenience of the Court, copies of certain relevant sections of the California Water Storage District Act of 1921 are submitted herewith.)

In accordance with the mandate of that act, the State Engineer of the State of California divided the District into eleven divisions, having segregated "... into separate divisions lands possessing the same general character of water rights or interests in and to the waters of such common source . . ." Attached hereto as Exhibit A is a map of the District showing the eleven divisions. This original determination by the State Engineer of the boundaries of the eleven divisions has remained unchanged since the formation of the District. There has never been filed with the Department of Public Works or, since 1965, with the Board of Directors of the District any petition or request that the boundary lines of the divisions within the District be recast.

The Board of Directors of the District is composed of one director for each division.

Under California law, a Water Storage District undertakes what are known as "District Projects" (California Water Code, sections 42200 ff.). The Tulare Lake Basin Water Storage District has had four District Projects since its formation:

General District Project No. 1.

On July 12, 1927, the Board of Directors of the District approved a "Report and Estimate of Cost of

Proposed Improvements of Tulare Lake Basin Water Storage District," a copy of which is submitted herewith as Exhibit B. On July 22, 1927, this report was filed with the Office of the State Engineer who approved the report and called for an election to be held to approve or disapprove said report. An election was duly held on December 6, 1927, at which time the Report and Estimate was duly adopted as General District Project No. 1.

General District Project No. 1 contemplated the purchase by the District of eighteen (18) sections of land in the lowest part of the Basin to be used as a water storage reservoir, the construction of certain facilities in the main channel of the Kings River to divert water from the North Fork of that river to the South Fork and for the construction of certain channel improvements. The estimated cost of the General District Project No. 1 was \$1,608,434.85.

After the aforementioned election adopting the General Project No. 1, proceedings were held in accordance with Section 19 of the California Water Storage District Act for the levy of assessments upon the lands of the District. The State Engineer appointed three commissioners who, after duly conducted hearings, assessed the costs of the project in proportion to the benefits that they determined would accrue to the various lands in the District. The Assessment Commissioners prepared an Assessment Roll and reported to the State Engineer. See Exhibit C submitted herewith. This assessment became effective on August 3, 1929 and remained in full force and effect until 1961, when General District Project No. 2 was adopted.

From time to time, various portions of General Project No. 1 were carried out in whole or in part.

Some twenty (20) calls for payment were made under this assessment, totaling approximately 47.13 per cent of this assessment.

However, because of an adverse decision in the courts of the State of California, the District was prevented from diverting the flow of the Kings River to the South Fork, and because of the depressed state of the economy in the 1930's and a long cycle of dry weather when there was no water available for storage, the District abandoned its plan to purchase the eighteen sections in the Basin. They reverted to private ownership.

General District Project No. 2.

Under the provisions of the Flood Control Act of 1944, the Corps of Engineers of the United States Army was authorized to construct flood control dams and reservoirs on the Kings, Kaweah, Tule and Kern Rivers. These projects were scheduled for completion at various dates beginning in the early 1950's. By 1960, it was the desire of the Tulare Lake Basin Water Storage District to acquire storage space in each of these reservoirs by appropriate agreements with the United States. Therefore, the District undertook General District Project No. 2. The Report and Estimate of Cost of General District Project No. 2 dated March 2, 1961 is submitted herewith as Exhibit D. The following procedural steps were undertaken to implement General District Project No. 2:

1. On March 2, 1961, the Board of Directors of the District approved and adopted the Report and Estimate of Cost which estimated the total cost of General District Project No. 2 at \$2,720,000.

2. On April 5, 1961, the Report and Estimate of Cost was filed with the California State Department of Water Resources.

3. On June 26, 1961, after an investigation, the Department of Water Resources approved and confirmed the aforementioned report and issued an order calling an election to determine whether the report should be adopted by the District.

4. On August 1, 1961, an election was held in the District on the question of whether District Project No. 2 should be completed.

5. On August 16, 1961, the Department of Water Resources issued its order declaring the results of the aforementioned election.

The canvass of votes indicated that under Official Ballot A there were 66,313 votes in favor of the project and none opposed. Under Official Ballot B, the total number of votes cast at the election was 50 for completion of the project and none opposed.

6. On August 29, 1961, the District filed an action in the State courts to determine the validity of the adoption of the project.

7. On October 20, 1961, the court rendered a judgment declaring that the adoption of General District Project No. 2 was valid.

8. On July 30, 1962, an assessment in the amount of \$2,720,000 became duly established.

A copy of the complaint in the validation proceedings, including the exhibits attached thereto as well as the Findings of Fact, Conclusions of Law and Judgment, is attached hereto as Exhibit E.

General District Project No. 3.

As a result of an opinion by Frank J. Barry, Solicitor of the Department of Interior, the anticipated contractual arrangements which the District expected to enter into with the United States were substantially changed. Nonetheless, it was the judgment of the Board of Directors of the District that the interest of the District would be served by participating in a series of contracts acquiring storage space on the four floor control dams mentioned in General District Project No. 2. It was estimated that the total cost of General District Project No. 3 would be \$2,795,000. (No part of the prior assessment of \$2,720,000 had been called for payment.) A copy of the Report and Estimate of Cost on General District Project No. 3 is attached hereto as Exhibit F.

The following steps were taken to implement General District Project No. 3:

1. On April 13, 1964, the Board of Directors of the District approved and adopted the Report and Estimate of Cost.
2. On May 12, 1964 the Report and Estimate of Cost was filed with the Department of Water Resources of the State of California.
3. On August 18, 1964, after a report and investigation, the Department of Water Resources made its order approving and confirming the Report and recommendations of the Board and on the same day issued an order calling for an election in the District to determine whether such Report and Estimate of Cost should be adopted by the District.

4. On September 15, 1964, an election was duly held as required by law on the question of whether the Project should be completed.
5. On September 29, 1964, the Department of Water Resources issued its order declaring the results of the election. (The canvass of the votes revealed that under Official Ballot A 59,216 votes were cast in favor of the Project; none was opposed to it. Under Official Ballot B, the total number of votes cast at the election was 45, all in favor of the Project, none opposed.)
6. On November 12, 1964, the District filed an action in the State court to determine the validity of General District Project No. 3.
7. On March 11, 1965, the court rendered a judgment declaring valid the adoption by the District of General District Project No. 3.

A copy of the complaint filed in the validation proceedings together with the exhibits attached thereto and the Findings of Fact, Conclusions of Law and the Judgment in that action are submitted herewith as Exhibit G.

Additional Project No. 1.

By 1963, the construction of the California State Aqueduct, which would bring water from Northern California along the west side of the San Joaquin Valley, was sufficiently assured that the State of California was willing to contract with appropriate agencies for the sale of such water. The District wished to contract with the State for the purchase of a substantial amount of this water for irrigation use on the lands of the District. The Report and Estimate on Additional Project No. 1 was favorably passed upon by the Board of

Directors on November 18, 1963, approved by the Department of Water Resources on November 20, 1963 and approved by the voters of the District on December 17, 1963. A copy of the Report and Estimate of Cost is submitted herewith as Exhibit H.

Subsequently, it was determined that the District could contract for additional water from the State. Accordingly, the District undertook to enter into a modified agreement with the State by means of Modification to Additional Project No. 1. The following steps were taken to empower the District to contract with the State for the purchase of water:

1. On August 4, 1964, the Board of Directors of the District approved and adopted a Report and Estimate of Cost of Modification of Additional Project No. 1.
2. On August 5, 1964, the Report was filed with the Department of Water Resources of the State of California.
3. On August 18, 1964, the Department of Water Resources made and entered its order approving the Report and made another order calling for an election in the District to determine whether such Report and Estimate should be adopted by the District.
4. On September 15, 1964, an election was duly held on the question of whether the Modification to Additional Project No. 1 should be adopted.
5. On September 21, 1964, the Department of Water Resources issued its order declaring the results of the election. (The canvass of the votes

revealed that under Official Ballot A 59,326 votes were cast in favor of the Project; none was opposed. Under Official Ballot B, 45 votes were cast in favor of the Project; none was opposed.)

6. On November 12, 1964, the District filed an action to determine the validity of the Report and Estimate on the Modification of Additional Project No. 1.

7. On March 11, 1965, the Court rendered a judgment declaring valid the adoption of the Modification of Additional Project No. 1.

A copy of the complaint filed in the validation proceedings together with exhibits attached thereto and the Findings of Fact and Conclusions of Law and Judgment are submitted herewith as Exhibit I.

General District Project No. 4.

Having contracted with the State of California for the purchase of water, it was necessary to transport this water from the State Aqueduct to the District. Therefore, it was the unanimous judgment of the Directors of the District that it would be in the best interests of the landowners in the District to construct two laterals from the State Aqueduct to the District by which to transport the water to the District. It was also deemed advisable that the District construct an office building. It was estimated that the total cost for Project No. 4 would be \$1,800,000. (In fact, the two laterals have been constructed by the District at a cost of approximately \$2,500,000.)

The following steps were taken to implement Project No. 4:

1. On July 5, 1966, the Board of Directors of the District unanimously approved and adopted the Report and Estimate of Cost of General District Project No. 4, a copy of which is submitted herewith as Exhibit J.
2. On December 19, 1966, the Report was filed with the District's Securities Commission.
3. On May 19, 1967, the District's Securities Commission issued its order approving General District Project No. 4 and thereafter, in accordance with Section No. 42525 of the California Water Code, the Board of Directors called an election to be held in the District to determine whether the voters approved Project No. 4.
4. On July 11, 1967, an election was held by the District in accordance with the aforementioned procedure.
5. On July 24, 1967, the Board of Directors canvassed the results of the election and reported that under Official Ballot A there were 79,523 votes in favor of the completion of District Project No. 4 and 13,923 votes opposed. Under official Ballot B, the number of ballots cast was 207 votes in favor of the Project; 63, opposed.
6. On May 18, 1967, the Salyer Land Company filed an action in the State courts challenging the validity of District Project No. 4.
7. On September, 1967, an order was entered by stipulation decreeing that Project No. 4 had been validly adopted by the District. A copy of the complaint, stipulation and judgment are submitted herewith as Exhibit K.

Assessment Commissioners were appointed in accordance with California Water Code section 46150, who prepared an Assessment Roll and filed their report with the District Securities Commission. A copy of their report is submitted herewith as Exhibit L and a copy of the Assessment Roll, as Exhibit M.

The last election of directors was held May 23, 1967. There was no election in 1969. The District called an election to be held February 2, 1971. Petitions were circulated in three divisions on behalf of the incumbent directors. There were no petitions on behalf of others. Therefore, the three directors were reappointed to succeed themselves in accordance with California Water Code section 41307. No petitions were circulated in Divisions 4 and 11, represented by Fred Salyer and C. Everette Salyer, respectively. These directors were reappointed at their request by the Department of Water Resources of the State of California.

The Tulare Lake Basin Water Storage District encompasses approximately 193,000 acres, most of which is located in the Tulare Lake Basin. Tulare Lake Basin in turn is a shallow depression of about 270,000 acres in area located west of Corcoran, California. A map of the Basin showing the boundaries of the District is submitted herewith as Exhibit N.

The Basin is subject to flooding from time to time, principally from the flows of the Kings, Kaweah, Tule or Kern Rivers or combinations thereof. For example, in 1969 one of the largest floods in history inundated portions of the Basin, flooding over 88,000 acres of rich farmland. A photograph of the Basin showing the flooded area on October 5, 1969 is submitted herewith

as Exhibit O. At the peak of the flood, 100 per cent of divisions 3, 5 and 6, 56 per cent of division 4 and 28 per cent of division 7 were under water.

Because of the recurrent floods, very few people live in the District. At the present time, there are 77 men, women and children living in the District. Many of the families are permanent or semi-permanent employees of Westlake Farms, Inc., which owns approximately 15,000 acres of land on the west side of the Basin. For example, 38 people reside at that company's Nevada Avenue Labor Camp; 6, at its Kettleman City Labor Camp; 10, at its headquarters complex; and 12, at its South Ranch headquarters, making a total of 66 people affiliated with Westlake Farms, Inc. living in the District. In addition, 2 people live at the El Rico headquarters of the J. G. Boswell Company and 4, at that company's Homeland headquarters. Four people live at the Southlake Farms headquarters, and Lawrence Ellison one of the plaintiffs in this action, lives in a home owned by plaintiff Salyer Land Company at its North Central headquarters. A map showing the location of each of these locations, except Westlake Farms South Lake headquarters, is submitted herewith as Exhibit P.

Among these people, only the members of the Howe families, who are the owners of Westlake Farms, a corporation, own land in the District.

There are 307 landowners in the District. The pattern of land ownership varies greatly in different portions of the District. For example, in the lower portions of the land is held, for the most part, in sizable ownerships. However, in the southeastern quadrant, in an area sometimes referred to as the Homeland District,

there are many small ownerships. This pattern is due to the fact that some years ago there was some speculation in oil drilling in the area and small ownerships were sold by the promoters of this venture. These small holdings are all leased for farming to larger operators, who usually vote these smaller holdings by proxy. A schedule showing the relative number of land holdings is submitted herewith as Exhibit Q.

The District provides no public services, such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed and operated by a municipal body. There are no towns, shops, hospitals, fire departments, police, buses, trains or other facilities of a type designed to improve the quality of life within the boundaries of a governmental entity.

The thrust of the complaint deals with the landowner qualifications for voting as set forth in California Water Code section 41000. By virtue of this section, only holders of title to land may vote at a general election. Members of the Board of Directors are elected at a general election. However, the Board actually exercises very little governmental power. Apart from housekeeping chores, the principal activities of the District are carried out through the medium of District Projects.

Where District Projects are concerned, the election procedures are different than those at a general election. This is the election at which the voters determine whether they will subject their lands to the estimated cost of the project. For these elections, California Water Code section 42550 requires that to adopt the report there must be a majority of all votes cast and a majority of the qualified voters who voted at the election.

This means, then, that each landowner is provided with two ballots, one entitling him to cast as many votes as the assessed valuation of his land computed in units of \$100 of assessed valuation determines. This ballot has been referred to as Official Ballot A. In addition, as a landowner, however large or small his holdings, he is entitled to cast one vote under Official Ballot B. Copies of Official Ballot A and Official Ballot B are submitted herewith as Exhibits R and S respectively.

The net effect of this Code section is that a simple majority of the landowners in the Tulare Lake Basin can defeat any District Project. Therefore, the 189 landowners, who own 80 acres or less of land in the District, representing but 2.34 per cent of the acreage in the District, have the electoral power to defeat any District Project.

Defendant's List of Exhibits.

Filed June 10, 1971.

EXHIBIT A—Map of the Tulare Lake Basin Water Storage District

EXHIBIT B—Report and Estimate of Cost on Proposed Improvements of Tulare Lake Basin Water Storage District dated July 12, 1927

EXHIBIT C—Assessment Commissioner's report

EXHIBIT D—Report and Estimate of Cost on General District Project No. 2 dated March 2, 1971

EXHIBIT E—Complaint, Findings of Fact, Conclusions of Law and Judgment in election proceedings regarding General District Project No. 2

EXHIBIT F—Report and Estimate of Cost on General District Project No. 3

EXHIBIT G—Complaint, Findings of Fact, Conclusions of Law and Judgment in validation proceedings regarding General District Project No. 3

EXHIBIT H—Report and Estimate of Cost on Additional Project No. 1

EXHIBIT I—Complaint, Findings of Fact, Conclusions of Law and Judgment in validation proceedings regarding Modification of Additional Project No. 1

EXHIBIT J—Report and Estimate of Cost on General District Project No. 4

EXHIBIT K—Complaint, stipulation and judgment regarding validity of General District Project No. 4

EXHIBIT L—Assessment Commissioners' report regarding General District Project No. 4

EXHIBIT M—Assessment Roll regarding General District Project No. 4

EXHIBIT N—Map of the Tulare Lake Basin Water Shortage District

EXHIBIT O—Photograph of Tulare Lake Basin on October 5, 1969

EXHIBIT P—Map showing various residence locations in the District

EXHIBIT Q—Schedule showing the relative number of land holdings in the District

EXHIBIT R—Copy of Official Ballot A

EXHIBIT S—Copy of Official Ballot B

DEFENDANT'S EXHIBIT P. **RESIDENTS WITHIN BOUNDARIES OF TULARE LAKE BASIN WATER STORAGE DISTRICT**

Section 1-21-19

Mr. and Mrs. Theodore F. Dragoo	2
Mr. and Mrs. Ruperto H. Escalera and three children	5
Mr. and Mrs. Thomas J. Parrish	2
Mr. and Mrs. Kenneth G. Rider and two children	4
Mr. and Mrs. Tony O. Jiminez and two children	4
Mr. and Mrs. Martin L. Dunham	2
Mr. and Mrs. William E. Spangler	2
Mr. and Mrs. Perry Hixon	2
Mr. and Mrs. M. S. Spencer and one child	3
Mr. and Mrs. Martin Molina and two children	4
Mr. and Mrs. Richard W. Koontz	2
Mr. and Mrs. Donald M. Langdon	2
Mr. and Mrs. John P. Warren and two children	4
	<hr/>
	38

Section 7-22-19

Mr. and Mrs. W. W. Davin	2
Mr. and Mrs. H. W. Bentley and two children	4
	<hr/>
	6

Section 11-21-19

Mr. and Mrs. Ceil W. Howe	2
Mr. and Mrs. Ceil W. Howe, Jr. and one child	3
Mr. and Mrs. Ed H. Howe and two children	4
Mr. M. O. Reed	1
	<hr/>
	10

RESIDENTS WITHIN BOUNDARIES OF TULARE LAKE BASIN WATER STORAGE DISTRICT

PAGE TWO

South Ranch Headquarters

Star Route, Box 11, Stratford, California 93266

Mr. Lupe Martinez	1
Mr. Alex Jimenez	1
Mr. Luis Rameriz	1
Mr. Jesus Hidalgo	1
Mr. Jose Medina	1
Mr. Jorge Salazar	1
Mr. Salvador Avila	1
Mr. Noe C. Sotela	1
Mr. Cresencio Hara Resa	1
Mr. Jose E. Quinones	1
Mr. Bob Gibson, Jr.	1
Mr. Ruben Avila	1

12

Section 1-22-21

Mr. and Mrs. Chris LeMay	2
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2

Section 13-23-21

Mr. and Mrs. Wayne Pendola	2
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Mr. and Mrs. Ted A. Brien	2
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4

Section 9-23-22

Mr. and Mrs. Dale Frey	2
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Mr. and Mrs. Hamil Saylor	2
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4

Section 19-21-20

Mr. Lawrence Ellison	1
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1

TOTAL RESIDENTS WITHIN BOUNDARIES

77



DEFENDANT'S EXHIBIT Q.

SUMMARY

LAND OWNERSHIP IN THE TULARE LAKE BASIN WATER STORAGE DISTRICT

	Number of Acres	Number of Ownerships	Number of Acres	Percent of Total Acreage	Cumulative Percent of Total Acreage
Ownerships greater than	25,001	1	61,666	32.76	
Ownerships between	10,001 and 25,000	4	62,031	32.95	65.71
" "	5,001 and 10,000	1	5,122	2.72	68.43
" "	2,561 and 5,000	2	6,462	3.43	71.86
" "	1,281 and 2,560	6	10,294	5.47	77.33
" "	641 and 1,280	12	10,453	5.55	82.88
" "	321 and 640	29	15,255	8.10	90.98
" "	161 and 320	33	8,539	4.54	95.52
" "	81 and 160	30	4,034	2.14	97.66
" "	41 and 80	33	2,334	1.24	98.90
" "	21 and 40	37	1,353	.72	99.62
" "	0 and 20	119	710	.38	100.00
		<u>307</u>	<u>188,253</u>	<u>100.00</u>	

WE ARE LAKE BASIN WATER STORAGE DISTRICT

Number of Plants	Number of Seeds	Number of Plants	Number of Seeds	Number of Plants	Number of Seeds
1	100	1	100	1	100
2	200	2	200	2	200
3	300	3	300	3	300
4	400	4	400	4	400
5	500	5	500	5	500
6	600	6	600	6	600
7	700	7	700	7	700
8	800	8	800	8	800
9	900	9	900	9	900
10	1000	10	1000	10	1000
11	1100	11	1100	11	1100
12	1200	12	1200	12	1200
13	1300	13	1300	13	1300
14	1400	14	1400	14	1400
15	1500	15	1500	15	1500
16	1600	16	1600	16	1600
17	1700	17	1700	17	1700
18	1800	18	1800	18	1800
19	1900	19	1900	19	1900
20	2000	20	2000	20	2000
21	2100	21	2100	21	2100
22	2200	22	2200	22	2200
23	2300	23	2300	23	2300
24	2400	24	2400	24	2400
25	2500	25	2500	25	2500
26	2600	26	2600	26	2600
27	2700	27	2700	27	2700
28	2800	28	2800	28	2800
29	2900	29	2900	29	2900
30	3000	30	3000	30	3000
31	3100	31	3100	31	3100
32	3200	32	3200	32	3200
33	3300	33	3300	33	3300
34	3400	34	3400	34	3400
35	3500	35	3500	35	3500
36	3600	36	3600	36	3600
37	3700	37	3700	37	3700
38	3800	38	3800	38	3800
39	3900	39	3900	39	3900
40	4000	40	4000	40	4000
41	4100	41	4100	41	4100
42	4200	42	4200	42	4200
43	4300	43	4300	43	4300
44	4400	44	4400	44	4400
45	4500	45	4500	45	4500
46	4600	46	4600	46	4600
47	4700	47	4700	47	4700
48	4800	48	4800	48	4800
49	4900	49	4900	49	4900
50	5000	50	5000	50	5000

DEFENDANT'S EXHIBIT R.

"BE IT FURTHER RESOLVED that for the purpose of said election, one election precinct, designated Election Precinct No. 1, is hereby established in said District, the boundaries of which shall be the same as the boundaries of said District; and

"BE IT FURTHER RESOLVED that the voting place in said Election Precinct No. 1 is hereby designated and the persons to act as a board of election at said voting place are hereby appointed as follows:

Voting Place:

El Rico Ranch Office of J. G. Boswell Company,
located in the Northeast Quarter of Section 1,
Township 22 South, Range 21 East, M.D.B. & M.

Board of Election:

Inspector: Eloise Salyer
Alternate: George Voll
Judge: Margaret Gilkey
Alternate: Ed Fischer
Judge: Ed Howe
Alternate: Robert Lundquist

"BE IT FURTHER RESOLVED that notice of said election be published once a week for three (3) weeks prior to said election in a newspaper of general circulation printed and published in the County of Tulare, State of California, and in a newspaper of general circulation printed and published in the County of Kings, State of California, and that notice of said election be posted at the District office and at three public places within the District; and

"BE IT FURTHER RESOLVED that the Secretary of this Board of Directors be, and he is hereby authorized to execute said notice of said election on behalf of this Board of Directors."

Whereupon, Director Sherrill moved and Director Barnes seconded the motion for the adoption of such resolution. The roll was called on the motion with the following result:

VOTING IN FAVOR

Directors Howe, Robinson,
Sherrill, Anderson, Barnes,
Vandergriff

VOTING AGAINST

Salyer
Gadd

The president declared the motion carried. At this moment landowner Clarence Salyer entered the meeting.

The secretary then presented two forms of ballots prepared to be used at such election. These were as follows:

Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

Initials
of Member
of
Election
Board

MARK CROSS (+)
ON BALLOT
ONLY WITH
RUBBER STAMP;
NEVER WITH PEN
OR PENCIL
(Fold ballot to this
perforated line, leaving
top margin exposed)

OFFICIAL BALLOT (A)
(Voting Basis, Assessed Value of Land)

TULARE LAKE BASIN WATER STORAGE DISTRICT
TULARE AND KINGS COUNTIES, CALIFORNIA
GENERAL DISTRICT PROJECT NO. 4 PROJECT ELECTION
TUESDAY, JULY 11, 1967

A report of the Board of Directors of the Tulare Lake Basin Water Storage District entitled "Report and Estimate of Cost on General District Project No. 4 for Tulare Lake Basin Water Storage District" was approved on July 5, 1966. The report sets forth a project for the District for the construction of two laterals from the California Aqueduct to the District and the construction of an office building for the District, and sets forth and describes the proposed works. There is on file with the report a recommendation of the Board of Directors that the project be carried out in accordance with the report. On May 19, 1967, the California District Commission made and entered an order approving and confirming the report and the recommendation. The purpose of the election is to determine whether the report and the recommendation of the Board of Directors of the District shall be adopted.

INSTRUCTIONS TO VOTERS: To vote in favor of the Proposition, stamp a cross (+) in the voting square after the words "Completion of Project—YES." To vote against the proposition, stamp a cross (+) in the voting square after the words "Completion of Project—NO." All marks except the cross (+) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly stamp, tear or deface this ballot, return it to the Inspector of the Election Board and obtain another.

PROPOSITION SUBMITTED TO VOTE OF VOTERS

PROPOSITION: Shall the report and the recommendation of the Board of Directors of the District on General District Project No. 4 be adopted	Completion of Project— YES Completion of Project— NO
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Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

Initials
of Member
of
Election
Board

MARK CROSS (+)
ON BALLOT
ONLY WITH
RUBBER STAMP;
NEVER WITH PEN
OR PENCIL
(Fold ballot to this
perforated line, leaving
top margin exposed)

OFFICIAL BALLOT (A)
(Voting Basis, Assessed Value of Land)

TULARE LAKE BASIN WATER STORAGE DISTRICT
TULARE AND KINGS COUNTIES, CALIFORNIA
GENERAL DISTRICT PROJECT NO. 4 PROJECT ELECTION
TUESDAY, JULY 11, 1967

A report of the Board of Directors of the Tulare Lake Basin Water Storage District entitled "Report and Estimate of Cost on General District Project No. 4 of Tulare Lake Basin Water Storage District" was approved on July 5, 1966. The report sets forth a project for the District for the construction of two laterals on the California Aqueduct to the District and the construction of an office building for the District, and sets forth and describes the proposed works. There is on file with the report a recommendation of the Board of Directors that the project be carried out in accordance with the report. On May 19, 1967, the California District Commission made and entered an order approving and confirming the report and the recommendation. The purpose of the election is to determine whether the report and the recommendation of the Board of Directors of the District shall be adopted.

INSTRUCTIONS TO VOTERS: To vote in favor of the Proposition, stamp a cross (+) in the voting square after the words "Completion of Project—YES." To vote against the proposition, stamp a cross (+) in the voting square after the words "Completion of Project—NO." All marks except the cross (+) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly stamp, tear or deface this ballot, return it to the Inspector of the Election Board and obtain another.

PROPOSITION SUBMITTED TO VOTE OF VOTERS

PROPOSITION: Shall the report and the recommendation of the Board of Directors of the District on General District Project No. 4 be adopted	Completion of Project— YES Completion of Project— NO
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PROPOSITION SUBMITTED TO VOTE OF VOTERS

PROPOSITION: Shall the report and the recommendation of the Board of Directors of the District on General District Project No. 4 be adopted?	Completion of Project— YES Completion of Project— NO
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Initials of Elected Officer

Whereupon Director Sherrill moved and Director Barnes seconded the motion and the motion was carried unanimously that such forms of ballots be adopted for use in such election.

Engineer Summers made the following report:

"1. Question has arisen in the Audit Committee regarding the District's position on the water quality standards, that have been recently adopted by the Central Valley Pollution Control Board. The Department of Water Resources has requested, and the Audit Committee has supported their request, that the contractors oppose the standards at the meeting of June 14, 1967 of the State Water Quality Board."

The Board of Directors took no action on the matter but did instruct Engineer Summers to attend the meeting and, after reviewing the matter there, to take such action as he thought was appropriate.

"2. He advised the Board that we are getting a tailgate problem on the uplope of Lateral 'A' in two different locations. This matter was discussed at the November meeting of the Board of Directors. He stated that one point the water had entered the new canal under the spoil bank, and at the other site it had not as yet started to impound against the spoil bank, but would do so shortly. He stated that if this problem got too serious we should consider pumping it into an existing ditch in the vicinity."

DEFENDANT'S EXHIBIT S.

"BE IT FURTHER RESOLVED that for the purposes of said election, one election precinct, designated Election Precinct No. 1, is hereby established in said District, the boundaries of which shall be the same as the boundaries of said District; and

"BE IT FURTHER RESOLVED that the voting place in said Election Precinct No. 1 is hereby designated and the persons to act as a board of election at said voting place are hereby appointed as follows:

Voting Place:

El Rico Ranch Office of J. G. Boswell Company,
located in the Northeast Quarter of Section 1,
Township 22 South, Range 21 East, M.D.B. & M.

Board of Election:

Inspector: Eloise Salyer
Alternate: George Voll
Judge: Margaret Gilkey
Alternate: Ed Fischer
Judge: Ed Howe
Alternate: Robert Lundquist

"BE IT FURTHER RESOLVED that notice of said election be published once a week for three (3) weeks prior to said election in a newspaper of general circulation printed and published in the County of Tulare, State of California, and in a newspaper of general circulation printed and published in the County of Kings, State of California, and that notice of said election be posted at the District office and at three public places within the District; and

"BE IT FURTHER RESOLVED that the Secretary of this Board of Directors be, and he is hereby authorized to execute said notice of said election on behalf of this Board of Directors."

Thereupon, Director Sherrill moved and Director Barnes seconded the motion for the adoption of such resolution. The roll was called on the motion with the following result:

VOTING IN FAVOR

Directors Howe, Robinson,
Sherrill, Anderson, Barnes,
Vandergriff

VOTING AGAINST

Salyer
Gadd

The president declared the motion carried. At this moment landowner Clarence Salyer entered the meeting.

The secretary then presented two forms of ballots prepared to be used at such election. These were as follows:

This Ballot
Represents

Initials of election officer writing
or stamping number of votes

VOTES

The second form of ballot, being Official Ballot (B) was as follows:

Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

Initials
of Member
of
Election
Board

MARK CROSS (+)
ON BALLOT
ONLY WITH
RUBBER STAMP;
NEVER WITH PEN
OR PENCIL
(Fold ballot to this
perforated line, leaving
top margin exposed)

OFFICIAL BALLOT (B)

(Voting Basis, One Vote For Each Qualified Voter)

TULARE LAKE BASIN WATER STORAGE DISTRICT

Counties of Kings and Tulare, State of California

GENERAL DISTRICT PROJECT NO. 4 PROJECT ELECTION

Tuesday, July 11, 1967

A report of the Board of Directors of the Tulare Lake Basin Water Storage District entitled "Report and Estimate of Cost on General District Project No. 4 for Tulare Lake Basin Water Storage District" was approved on July 5, 1966. The report sets forth a project for the District for the construction of two laterals from the California Aqueduct to the District and the construction of an office building for the District, and sets forth and describes the proposed works. There is on file with the report a recommendation of the Board of Directors that the project be carried out in accordance with the report. On May 19, 1967, the California District Commission made and entered an order approving and confirming the report and the recommendation. The purpose of the election is to determine whether the report and the recommendation of the Board of Directors of the District shall be adopted.

INSTRUCTIONS TO VOTERS: To vote in favor of the Proposition, stamp a cross (+) in the voting square after the words "Completion of Project—YES." To vote against the proposition, stamp a cross (+) in the voting square after the words "Completion of Project—NO." All marks except the cross (+) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly stamp, tear or deface this ballot, return it to the Inspector of the Election Board and obtain another.

This Ballot
Represents

VOTES

Initials of election officer writing
or stamping number of votes

The second form of ballot, being Official Ballot (B) was as follows:

Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

Initials
of Member
of
Election
Board

MARK CROSS (+)
ON BALLOT
ONLY WITH
RUBBER STAMP;
NEVER WITH PEN
OR PENCIL
(Fold ballot to this
perforated line, leaving
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TULARE LAKE BASIN WATER STORAGE DISTRICT

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If you wrongly stamp, tear or deface this ballot, return it to the Inspector of the Election Board and obtain another.

PROPOSITION SUBMITTED TO VOTE OF VOTERS

PROPOSITION: Shall the report and the recommendation of the Board of Directors of the District on General District Project No. 4 be adopted	Completion of Project— YES Completion of Project— NO
--	---

Initials of Elected Officer

Thereupon Director Sherrill moved and Director Barnes seconded the motion and the motion was carried unanimously that such forms of ballots be adopted for use at such election.

Engineer Summers made the following report:

- "1. Question has arisen in the Audit Committee regarding the District's position on the water quality standards, that have been recently adopted by the Central Valley Pollution Control Board. The Department of Water Resources has requested, and the Audit Committee has supported their request, that the contractors oppose the standards at the meeting of June 14, 1967 of the State Water Quality Board."

The Board of Directors took no action on the matter but did instruct Engineer Summers to attend the meeting and, after reviewing the matter there, to take such action as he thought was appropriate.

- "2. He advised the Board that we are getting a tailgate problem on the uplope of Lateral 'A' in two different locations. This matter was discussed at the November meeting of the Board of Directors. He stated that one point the water had entered the new canal under the spoil bank, and at the other site it had not as yet started to impound against the spoil bank, but would do so shortly. He stated that if this problem got too serious we should consider pumping it into an existing ditch in the vicinity."

**PLAINTIFFS' RESPONSE TO DEFENDANT'S
STATEMENT OF FACTS.**

Filed June 14, 1971

Defendant's statement of facts is essentially correct, subject to the following reservations:

1. The statement that "the state engineer of the State of California divided the district into eleven divisions" is not fully accurate. The division lines were established by the district itself, and submitted to the state engineer for his approval. The Amended Report and Estimate of Cost for Project 1, a large red volume, has been or is being submitted by the defendant as its Exhibit "B". Plaintiffs had intended filing this report themselves, but have not done so to avoid duplication. Exhibit "D" of that report is entitled "Report on Feasibility of Proposed Tulare Lake Basin Water Storage District", and was prepared by Mr. S. T. Harding, the district's consulting engineer, under date of June 1, 1926. Pages 73 and 74 of Exhibit "D" are attached hereto for convenience. The relevant material is as follows:

"Directors divisions

The proponents of the district request its division into eleven directors divisions. This is the storage district act. The actual divisions desired are also presented by the proponents. These comply with section 6 of the water storage district act in 'possessing the same general character of water rights or interests in and to the waters of such common source.' The changes in boundary [of the district] that have been recommended would not materially affect the proposed divisions.

The proposed divisions follow generally the lines of existing reclamation districts. It is also

understood that they are adjusted to give the balance of representation desired by the parties to the agreement, entered as Exhibit F.

The proposed divisions comply with the law, and represent the desires of the larger part of the land owners. There appears to be little reason for changing them if they are satisfactory to the proponents. However, the number of directors requested is larger than is considered needed or desirable for such a district. Any disadvantages of such a number of divisions are internal matters of district management rather than of outside supervision, however.

Division 4 represents the lands in the reservoir area and the North Central Reclamation District. After the transfer of the reservoir lands to the storage district, if this is done, they would no longer be assessed and all vote in this division would be from the assessed value of the smaller area in the North Central Reclamation District.

As a reduction in the number of divisions would result in the need for revision of some portions of the agreement among the principal owners within the district, the establishment of the eleven divisions with the boundaries requested is recommended."

It will be noted that a map of Tulare Lake Basin Water Storage District showing the division boundaries is Exhibit "B" of the 1927 Report and Estimate of Cost. As defendant states in its factual submission, this report was filed with the state engineer on July 22, 1927, and he approved the report as filed, including the division

boundaries. But those boundaries originated with the proponents of the district.

It is true that the water storage district law required the dividing of the proposed district "into five, seven, nine, or eleven divisions so as to segregate into separate divisions land possessing the same general character of water rights . . ." [Water Code, §39777; stats. 1921, c. 914, p. 1731, sec. 6]. This was technically complied with, for all the lands in all the divisions in the defendant district were to have the same rights to district water. See page 24 of the Report and Estimate of Cost dated July 30, 1927, defendant's Exhibit "B":

"That is to say, all waters—whatever that quantity may be—acquired by or under control of the District, are to be *prorated equally over the acreage* in that District. Or, in other words, all things being equal, every acre of land within the boundaries of your District will be equally benefited by your project."

It is true that no formal request has been made of the Board of Directors for a redivisioning. But both counsel for the district and the president of the district were cross-examined on the subject as set forth in plaintiffs' statement of facts in the 1967 case of *Salyer Land Company, et al. v. Tulare Lake Basin Water Storage District*. In the 1969 case of *Salyer Land Company v. Louis T. Robinson, et al.* (the complete record of which has been filed as plaintiffs' Exhibit 7) one of the grounds stated in the first amended complaint for the removal of the six defendant directors in that litigation was the failure to redivide the district. At that time the defendants argued that the district could only be redivisioned after the adoption of its first project.

[Defendant's "Reply Memorandum in Re Demurrer in Motion to Strike", *Salyer Land Company v. Louis T. Robinson, et al.*, Kings County Superior Court No. 20056, page 12 of Exhibit 7]. In the same year in which the above litigation was filed, §41152 of the Water Code, the provision for redivisioning of water storage districts was repealed, effected as of August 29, 1969. As the answer of the defendant admits, although the date is there mistakenly given as August 29, 1970, "Section 41152 was repealed, and at this time there is no statutory provision concerned with redivisioning the district." The plaintiffs accordingly take the position that they had no administrative remedy, and they will shortly file a brief on this point.

2. With reference to the sequence of events as to General District Project No. 4, on December 6, 1966 a proposed supplement to Project 4 did not receive the necessary two-thirds majority. On December 16, 1966 four of the directors who had assented to Project 4 at the meeting of July 5, 1966, notified the Secretary of the district and the California District Securities Commission that they had withdrawn such assent.

3. The statement on page 11 of defendant's statement of facts, "these small holdings are all leased for farming to larger operators" is subject to the reservation that such farmers as Marion Harris, Ronnie Harris and Malcolm Powers farm small leaseholdings which are not leased to large operators, as detailed on pages 19 and 20 of plaintiffs' statement of facts.

4. The statement on page 12 that there are no fire departments in the district is subject to the reservation that there is a public fire department situated at the old Crocket and Gambogy headquarters in Section 9,

Township 23 South, Range 22 East. A portion of the fire department sign is visible at the right of the photograph of the residence at the old Crocket and Gambogy headquarters, the photograph being a part of plaintiffs' Exhibit 15.

5. The statement that there are no police is subject to the reservation that the sheriff's office of Kings County provides police protection throughout Kings County.

6. The statement on page 12, "the Board actually exercises 'very little governmental power'" is a conclusion of law rather than a statement of fact. Plaintiffs disagree, and consider all of the district's functions exclusively governmental under the holding of *Glenn-Colusa Irrigation District v. Ohrt*, 31 Cal. App. 2d 619 (1939). However, this is an issue of law rather than of fact.

Letter From Counsel to Court June 11, 1971.

Law Offices

THOMAS KEISTER GREER

110 Maple Avenue

Rocky Mount, Virginia 24151

**Honorable M. D. Crocker
United States District Court
Eastern District of California
Federal Buidding
Fresno, California 93721**

**Re: *Salyer Land Company, et al. vs.*
Tulare Lake Basin Water Storage
District Civil No. F-414**

Dear Judge Crocker:

It is my understanding that this case stands submitted on the fact statements filed by the plaintiffs and the defendant. It is my further understanding that the plaintiffs are to file their opening brief on or before June 30th, that the defendant is to file its brief on or before July 14th, and that the plaintiffs are to file their reply brief, if any, on or before July 28th.

With kindest regards, I am

Respectfully,

Thomas Keister Greer

TKG/pf

cc: C. Ray Robinson, Esq.
Ernest M. Clark, Esq.
Robert M. Newell, Esq.

Letter From Court to Counsel September 2, 1971.

UNITED STATES DISTRICT COURT

Eastern District of California

Fresno, California 93721

Thomas Keister Greer, Esq.

110 Maple Avenue

Rocky Mount, Virginia 24151

Re: *Salyer Land Company v. Tulare Lake
Basin Water Storage District—Civil No.
F-414*

Dear Mr. Greer:

The panel in the above-entitled case would appreciate supplemental memorandums directed to the subject:

"Assuming the constitutional validity of the limitation of the franchise to landowners and the weighting of the vote in accordance with the value of the land of each landowner-voter, would an issue of malapportionment as between divisions in the district remain in the case, and, if so, what would be the views of the parties as to that remaining issue?"

Please submit the supplemental memorandums within 15 days.

Very truly yours,

M. D. Crocker

cc: Honorable James R. Browning

Honorable Robert H. Schnacke

C. Ray Robinson, Esq.

Robert M. Newell, Esq.

Ernest M. Clark, Esq.

Letter From Clerk to Counsel Feb. 18, 1972.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**Office of the Clerk
U. S. Court House
Fresno, California 93721**

C. Ray Robinson

Attorney at law

650 W. 19th St.

Merced, Calif. 95340

Thomas Keister Greer

Attorney at law

Rocky Mount, Virginia 24151

Donnelly, Clark, Chase & Haakh

600 South Spring St.

Los Angeles, Calif.

Newell and Chester

650 So. Grand Ave., Suite 500

Los Angeles, Calif. 90017

Sirs:

Re: F-414-Civil

**Salyer Land Co., et al. v. Tulare Lake
Water, etc.**

**Enclosed herewith is a copy of memorandum and
order of Judge Crocker and Judge Schnake and a copy
of an opinion of Judge Browning concurring in part
and dissenting in part.**

Yours truly,

D. D. BUTLER

Deputy Clerk

encl.

**cc: Attorney General
State of Calif.**

Memorandum and Order.

Original Filed: February 17, 1972.

In the United States District Court, Eastern District of California.

Salyer Land Company, a California corporation, C. Everette Salyer, Fred Salyer, Lawrence Ellison, and Harold Shawl, Plaintiffs, vs. Tulare Lake Basin Water Storage District, a public district, Defendant. No. F-414 Civ.

This court has jurisdiction under section 1343 of Title 28 and section 1983 of Title 42 of the United States Code, and a three-judge court has been convened pursuant to section 2284 of Title 28 of the United States Code.

The case was submitted on factual statements of the parties and briefs, without testimony or oral argument. Plaintiffs were represented by C. Ray Robinson, Esq., and Thomas Keister Greer, Esq.; defendant was represented by Robert M. Newell, Esq., and Ernest M. Clark, Jr., Esq.

Plaintiffs are landowners or resident registered voters within the area covered by defendant, Tulare Lake Basin Water Storage District, which was organized pursuant to California law.

In this action, plaintiffs contend that California Water Code §§ 41000 and 41001¹ are unconstitutional in that they deny plaintiffs the equal protection of the

¹§ 41000. *Qualification.* Only the holders of title to land are entitled to vote at a general election.

§ 41001. *Vote in precinct; number of votes.* Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars (\$100), or fraction thereof, worth of his land, exclusive of improvements, minerals, and mineral rights therein, in the precinct.

law guaranteed by the fourteenth amendment of the Constitution of the United States in that they permit only landowners to vote and give them one vote for each \$100 of assessed valuation. Thus non-landowners cannot vote, and the small landowners get fewer votes than the large landowners.

Plaintiffs seek an order of this court enjoining defendant from giving effect to these sections and requiring defendant to submit a plan whereby all residents be permitted only one vote regardless of land-ownership.

At the outset, defendant asks this court to abstain from rendering a decision, but abstention is not proper in this case as the California Supreme Court has already upheld the constitutionality of these two sections.

Defendant is a water storage district organized in 1926 under California law which limits its activities to the development and improvement of the water supply within the district, thus benefiting the land which alone bears the cost.

It performs no governmental functions of general concern to the populace and provides no service to the general public such as found by the court in *Burrey v. Embarcadero Municipal Improvement District* recently decided by the Supreme Court of California.

The State of California has a compelling interest in the development of its water resources, and limiting the vote to landowners is necessary to further this state interest because it is doubtful if the District would have been formed unless the persons paying the expenses could control them.

While it is true that the activities of the District affect the economy of the area which is of interest to

residents that are not landowners, this is an indirect interest and not a direct, primary and substantial interest that would entitle them to vote. Thus limiting the vote to landowners in this particular water district does not violate plaintiffs' constitutional rights, and the "one man, one vote" cases cited by plaintiffs are not controlling in this special purpose district.

Section 41001 providing one vote for each \$100 of assessed valuation is not unconstitutional as the benefits and burdens to each landowner in the District are in proportion to the assessed value of the land, so permitting voting in the same proportion fairly distributes the voting influence.

The remaining issue in this case is the malapportionment of the divisions that is alleged in paragraph XII of the complaint. Plaintiffs pray that the District be required to submit a plan for holding all elections at large.

Defendant argues that sections 43730 and 41550 of the California Water Code provide adequate State remedies, that the remedy is not within the Civil Rights Act, and that if it is, this court should abstain due to the adequate State remedies.

California Water Code §§ 43730 and 41550 do not provide an adequate State remedy for malapportionment. Section 43730 pertains to improper board action and 41550 provides a means of forcing the board to hold an election. Section 41152 provided the redistricting remedy which plaintiffs seek, but was repealed in September 1969. From that date to the present, there has been no adequate State remedy.

Section 39777 will not grant relief as it merely requires initial segregation in divisions "possessing the

same general character of water rights or interests in the water of a common source." Nor does section 41153 help, as it merely contemplates that the board may make a redivision order; however, there is no mandatory requirement present.

Where there is no State remedy and a Civil Rights violation occurs, 42 U.S.C. 1983 has been interpreted "to provide a remedy. . . ." [*McNeese v. Board of Education*, 373 U.S. 668, 672 (1963)].

Here we have divisions created by a state engineer (approved) acting under state law, and these divisions have been maintained by the Board of Directors also purporting to act under state law. This action is within 42 U.S.C. 1983. [See, *Monroe v. Pape*, 365 U.S. 167 (1961)].

The present divisions have not been redivided for 40 years. Total assessed valuation of the land in Division 4 is nearly three times greater than the total assessed valuation of Division 10 (Division 4—\$1,954,547; Division 10—\$688,425). The result is that \$100 of assessed valuation in Division 10 has almost three times the voting power of \$100 of assessed valuation in Division 4. In addition, Division 4 has 110 separate landowners, whereas Division 10 has only 4. Each Division is entitled to one director on the District's Board of Directors. Consequently, the 10 landowners in Division 4 have only one-third the representation on the Board when compared to Division 10.

Such malapportionment presents a classic violation of equal protection and therefore defendant is ordered

to submit a plan to correct this malapportionment within six months of the date this decision becomes final.

If defendant is unable to redivision the district into divisions which are reasonably equal in assessed valuation and also possess the same general character of water rights or interest in the water of a common source as required by section 39777 of the California Water Code, the plan may provide for elections at large.

Dated: February 17, 1972.

M. D. Crocker
United States District Judge
Robert H. Schnacke
United States District Judge

Salyer Land Company v. Tulare Lake Basin Water Storage District No. F-414 Civil.

Original filed Feb. 17, 1972.

BROWNING, Circuit Judge, concurring in part, dissenting in part:

Defendant asks this court to abstain from rendering a decision with respect to California Water Code §§ 41000¹ and 41001.² "But the abstention rule only applies where 'the issue of state law is uncertain'" *Wisconsin v. Constantineau*, 400 U.S. 433, 438 (1971), and here the meaning of the challenged state statutes is clear.

Turning to the merits, it is clear at the outset that the Equal Protection Clause applies not only to the challenged statutes but also to their implementation by the defendant district. "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State." *Avery v. Midland County*, 390 U.S. 474, 579 (1968). Defendant and similar entities "are but the agents or representatives of the state in the particular locality in which they exist. They are organized for the purpose of carrying out the purposes of the legislature in its desire to provide for the general welfare of the state." *In re Madera Irrigation District*, 92 Cal. 296, 317, 28 Pac. 272, 276 (1891). See *Girth v. Thompson*, 11 Cal.App.2d 325, 328 (1970).³

¹See majority opinion at note 1.

²See majority opinion at note 1.

³California Water Code § 39059 declares that the powers conferred upon the board of directors of a water storage district "are police and regulatory powers and are necessary to the accomplishment of a purpose that is indispensable to the public interest." Section 39061 declares that use of water in a water stor-

To evaluate the constitutionality of the challenged voting rules, the purpose and effect of the rules must be examined in the context of the district's activity. "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interest which the State claims to be protecting, and the interests of those who are disadvantaged by the classifications." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) quoted in *Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969).

I.

Exclusion of persons from the vote must be "carefully scrutinized," and can be sustained only if "necessary to promote a compelling state interest." *Kramer v. Union Free School District*, *supra*, 395 U.S. at 627.⁴ It cannot be sustained unless "those excluded are in

age district, and of facilities and property to carry out the district's functions under the statute, "is a public use."

Water storage districts are governed by California Water Code §§ 39000-48401. The Board of each district has "all power and authority necessary to enable it to fully perform the duties imposed upon it. . . ." § 43150, *see generally* §§ 43000-44000. This includes the power to employ and discharge persons on a regular staff and to contract for the construction of district projects. § 43152.

The district can initiate projects and supervise their completion. §§ 42200-42750. It can condemn private property for use in such projects. §§ 43530-43533. It may cooperate with and contract with other agencies, state and federal. § 43151.

The district can authorize general obligations bonds and interest-bearing warrants. *See* §§ 44900-45900. It can also impose tolls or other charges on the use of its water, irrigation mechanisms, and other services and facilities. It can levy "assessments" up to \$2.50 per acre for organizational expenses and costs incurred in undertaking specific projects; for all other purposes, assessments are prorated to the extent of benefit conferred by the district project. *See* §§46000-47900.

⁴*See also* Cipriano v. City of Houma, 395 U.S. 701, 704 (1969).

fact substantially less interested or affected than those the statute includes." *Id.* at 632.⁵ Thus the interest of the state in confining the franchise to owners of land in the district must be weighed against the interest of those said to be disadvantaged by this classification, namely, lessees of such property and non-landowning district residents.

After review, it appears that there is compelling reason for disenfranchisement of non-owner, non-lessee residents of the district, but not, contrary to the majority's holding, for the exclusion of lessees of district land.

The relevant facts may be briefly summarized.

Much of California's agricultural land suffers from too little water or, intermittently, from too much. Conservation, distribution, and control of the water supply are major state concerns.⁶ The California Legislature has authorized a wide variety of special instrumentalities, including water storage districts, to provide a flexible response to water problems on a local basis. These special purpose agencies are credited with "vastly expanding water distribution facilities" in the state. Rogers & Nichols, *Water for California*, Vol. 2, § 448, at 35.

The defendant water storage district consists of 193,000 acres of intensively cultivated, highly fertile farm land. The district is sparsely populated—only 78 persons, including 18 children, live within its boundaries. This is said to be typical of such districts because the lands are agricultural, and because they are commonly

⁵See also *Cipriano v. City of Houma*, *supra*, 395 U.S. at 704. *Phoenix v. Kolodziejki*, 399 U.S. 204, 207, 212-213 (1970).

⁶See, e.g., California State Constitution, Article XIV, § 3; California Water Code §§ 100, 104, 105. See note 2.

arid, subject to flooding,⁷ or both. Nearly 85 per cent of the land in the district is farmed by four corporations. The residents of the district are all employees, or members of employees' families, of one or another of the four farming corporations. Only two residents are landowners; not directly, but through ownership of a corporation that farms about 16 per cent of the district's land.

Landowners have a direct and substantial interest in the efficient and effective management of the district. In keeping with the purpose of water storage districts, defendant district is authorized to plan and execute projects "for the acquisition, appropriation, diversion, storage, conservation, and distribution of water." Calif. Water Code § 42200.⁸ Defendant district has adopted and executed three such projects since its formation in 1924. These projects involved the purchase and storage of water for irrigation of lands within the district and the construction of a water delivery system. Each project required a multi-million dollar expenditure. In accordance with the statute (Calif. Water Code § 46176), the costs were assessed upon the lands of the district in proportion to benefits received by each tract.

The economic burden from district projects *cannot* fall on non-owner, non-lessee residents. There are no

⁷Nearly half of the land in the defendant district was flooded in 1969. One third of the district still remains under water.

⁸The plans may also include "any drainage or reclamation works connected therewith, and the generation of hydroelectric energy incident thereto, and to sale and distribution thereof. . . ." By the express terms of the statute, however, these additional powers may be used only in connection with and incidental to a plan to acquire, divert, store, conserve, and distribute water in the district. There is no evidence that the defendant district engaged in the generation, sale, or distribution of electric power.

forms of non-property oriented taxes, assessments, or other means through which district costs could be spread to others. *Cf. Cipriano v. City of Houma*, 395 U.S. 701, 705 (1969); *Phoenix v. Kolodziejski*, 399 U.S. 204, 209-10 (1970).

The district performs no governmental function and provides no service of direct concern to residents of the district. *Cf. Phoenix v. Kolodziejski*, 399 U.S. at 206, 209. Its activities relate solely to the storage and distribution of water for use in farming the land.* These functions and services would not differ at all if no one lived in the district. The district has nothing to do with furnishing police and fire protection, schools, roads, and other governmental services and facilities usually provided to residents of an area. For that reason, people who happen to reside within the physical boundaries of the district are not constituents of the officers or board of directors of the district in any real sense.

As employees of the farming corporations, residents of the district have an interest in the success of the farm operation and, hence, in the activities of the district that contribute to the success of those operations. But this interest is no different in kind or degree from the interest of other employees of the farming corporations who do not reside in the district, and is little different from the interest of non-resident suppliers and others whose economic well-being may be linked to the success of the district's farming opera-

*Plaintiffs argue that defendant district has the power to, and does, engage in flood control activities, and that these are obviously of interest to residents of the district. The power of the district in this respect is disputed, but any such power the district might possess would be limited to flood control connected with and incident to the exercise of the district's primary functions of water storage and distribution.

tions. If residents are constitutionally entitled to vote in district elections because of their interest as employees, so too are non-resident employees and, perhaps, all other economically affected non-residents.

Against this factual background, it is possible to evaluate the state's interest in limiting the franchise and the impact of the limitation upon disenfranchised lessees and residents.

The state's interest in the management of its water resources, and, therefore, in the creation and effective operation of water storage districts and similar agencies, is obviously a vital one. Limitation of the franchise to those who own or lease district land is necessary to further this compelling state interest for two reasons.

First, the limitation is necessary to induce landowners to join in the creation of such districts. It is inconceivable that the non-resident owners, controlling 85 per cent of the land in the defendant district, would have agreed to formation of the district or its continued existence had they been denied control over the selection and implementation of the multi-million dollar district projects designed solely to benefit the lands of the district and to be paid for entirely by assessment upon those lands. See *Schindler v. Palo Verde Irrigation District*, 1 Cal.App.3d 831, 839, 82 Cal. Rptr. 61 (1969).¹⁰ It is also unlikely that non-resident land-

¹⁰There are, in fact, "unique problems that make it necessary to limit the vote. . . ." *Phoenix v. Kolodziejewski*, 399 U.S. 204, 213 (1970). We are told that some California water storage districts have no residents, or only a nominal number. Unless ownership of an interest in the district's land were a permissible basis for the franchise, such districts could not function at all.

(This footnote is continued on next page)

owners would have participated had landowner control been subject to unpredictable dilution or deliberate manipulation¹¹ by the votes of residents having only a remote interest in the district's operations.

In the second place, in view of the nature of the issues to be voted upon, the exclusion of non-owner, non-lessee residents from the franchise in a water storage district is dictated by the state's interest in obtaining intelligent and responsible decisions as to the most effective water development program for the lands of the respective districts.¹²

Turning to those who are assertedly disadvantaged, it is evident from the foregoing discussion that the interest of residents who neither own nor lease property within the district is substantially less significant than that of the owners, and is both remote and indirect. Their exclusion from district elections can have only a minimal impact upon them, and is amply justified by the compelling state interest.

Contrary to the majority's view, however, this is not true of the exclusion of those who lease lands in the district for farming. This group's interest in the district's projects to increase the water available for farming and to improve its distribution is indistinguishable from the interest of the owners. They are also equally

A similar problem faces reclamation districts organized under Division 15 of the California Water Code. Voting in these districts is also limited to property owners. See § 50704. There are no residents on seven such reclamation districts totaling 88,654 acres that are located within the boundaries of defendant water district.

¹¹Sixty-six of the 78 persons now reported to reside in the district are employees of the corporate farms living on the corporation's land.

¹²*Oregon v. Mitchell*, 400 U.S. 112, 242 (1971) (opinion of Brennan, White, and Marshall, JJ); *Lassiter v. Northampton Elections Bd.*, 360 U.S. 45, 51 (1959).

interested in the cost of the district's projects, for this expense will be passed on to them by express agreement or in the form of increased rentals. *See, e.g., Phoenix v. Kolodziejski, supra*, 399 U.S. 204, 210-22.¹³ And obviously the state's interest in intelligent and responsible decisions regarding the district's water management program is not advanced by excluding those who actually farm the land.

The only substantial question is whether lessees must be excluded to induce landowner participation. Nothing in the record supports an affirmative answer; and the contrary is strongly suggested by the fact that the four corporations that farm 85 per cent of the district's land are major lessees of land as well as the largest landowners.

Thus, excluding non-owner, non-lessee residents advances the state's overall interest in intelligent and effective water resources development by encouraging the formation of water storage districts and by helping assure informed and interested voters in district elections.

II

Since ownership of a property interest in district land may be required as a qualification for voting in water storage district elections, it might seem to follow that it would also be permissible to weight the votes in proportion to the value of the voter's land, as the majority holds. *See Schindler v. Pablo Verde Irrigation District, supra*, 1 Cal.App.3d at 839. Brief consideration demonstrates, however, that this is not so.

¹³Defendant suggests that the lessees might obtain a provision in the lease for a proxy from the lessor as allowed by § 41002. If a statute otherwise infringes upon the Equal Protection Clause, the infringement of constitutional rights is not ameliorated by a possibility that relief might be obtained through private contracts.

In a wide variety of contexts the Supreme Court has emphasized that where an election concerns the exercise of important governmental powers having a substantial impact upon all members of the particular electorate, as here, the state is required to insure that the vote of every member of the electorate counts the same, so far as practicable, as that of every other member of the electorate.¹⁴ In *Hadley v. Junior College District*, 397 U.S. 50, 58-59 (1970), Mr. Justice Black summarized the Supreme Court's position in language applicable to this case:

"[A] State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, '[v]iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation.' [Sailors v. Board of Education, v. Board of Education, 387 U.S. 105, 110-11 (1967)] But once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.' *Gray v. Sanders*, 372 U.S. 368, 381 (1963)" (emphasis added).

¹⁴*Avery v. Midland County*, 390 U.S. 474, 485 (1968); *Swann v. Adams*, 385 U.S. 440 (1967); *Lucas v. Colorado Gen. Assembly*, 377 U.S. 713 (1964); *Burns v. Richardson*, 384 U.S. 73 (1966); *Roman v. Sincock*, 377 U.S. 695 (1964); *Davis v. Mann*, 377 U.S. 678 (1964); *Maryland Committee v. Tawes*, 377 U.S. 656 (1964); *WMCA, Inc. v. Lomenzo*, 377 U.S. 633 (1964); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *Wesbury v. Sanders*, 376 U.S. 1, 7-8 (1964); *Gray v. Sanders*, 372 U.S. 368, 379-80 (1963).

Cf. id. at 56. As Justice White said in *Phoenix v. Kolodziejski*, *supra*, 399 U.S. at 209, "Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise. . . . Placing such power in property owners alone can be justified only by some overriding interest of the owners that the State is entitled to recognize" (emphasis added).

Defendant has identified no compelling state interest in weighted voting in water storage district elections.

The statute itself weakens the contention that landowners would decline to participate in the formation of a water storage district if each vote weighed equally. A majority of the *number* of landowners is normally required to form such a district (Calif. Water Code § 39400),¹⁵ and a majority of the *number* of landowners voting is required to approve a district project. Calif. Water Code § 42550.

Neither can it be said that the state's interest in intelligent and responsible elections is served by weighted voting. There is nothing in the record to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf. Harper v. Virginia Board of Elections*, 383 U.S. 663, 688 (1966). And the landowner's interest in finding and implementing solutions

¹⁵The alternative is "not less than 500 petitioners, each of whom is the holder of title to land therein and which petitioners include the holders of title to not less than 10 percent in value of the land included within the proposed district." § 39400.

to those problems is no less acute because his operation may be of greater economic consequence to him; and is small. Efficient production from his smaller acreage the lesser absolute share of the cost of district projects he may¹⁶ be required to bear may impose a greater burden. As Judge Wisdom said in a related context, "In terms of voting responsibility, there is no necessary correlation between the amount of any assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another." *Stewart v. Parish School Board of Parish of St. Charles*, 310 F. Supp. 1172, 1179 (E.D. La. 1970), *aff'd* 400 U.S. 884 (1970). See also *Burry v. Embarcadero Municipal Improvement District*, 5 Cal.2d 671 (1971).

III

The order of the California Department of Water Resources approving the formation of the defendant district divided the district into eleven divisions for election of directors to the district's board.¹⁷

Each division elects one director, but the number of landowners in the divisions varies from 110 in di-

¹⁶Project costs are distributed in proportion to the benefit conferred upon the particular tract rather than in proportion to the tract's value or size. California Water Code § 46176.

¹⁷California Water Code § 39777 reads:

"Division of district. The order on final hearing shall also divide the proposed district into five, seven, nine, or eleven divisions so as to segregate into separate divisions lands possessing the same general character of water rights or interests in the water of a common source. The divisions shall be numbered first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, or eleventh, according to the number of the division."

vision four to four in division ten.¹⁸ While the record does not show the number of lessees in each division, there is no reason to believe that the gross malapportionment among the divisions will be corrected merely by including lessees among those qualified to vote.

Such malapportionment does indeed present a classic violation of equal protection. See *Reynolds v. Sims*, 377 U.S. 533, 562-63 & n.40 (1964). As Mr. Justice Black said in *Hadley, supra*, after finding that important governmental functions were involved having sufficient impact throughout the constituency, "when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal number of voters can vote for proportionally equal numbers of officials." 397 U.S. at 56.

It is suggested that the apportionment reflects compliance with the statutory directive that division lines be drawn "so as to segregate into separate divisions lands possessing the same general character of water rights." See note 17. It is unnecessary to consider whether this would justify the result, if true. The record is clear that the divisional lines were not drawn on this basis.¹⁹ The record also demonstrates that the

¹⁸Even were the weighted voting practices of the district valid, the malapportionment would be substantial. The assessed value of the land in division four is \$1,954,547, while that of division ten is \$688,425.

¹⁹A "Report on Feasibility of Proposed Tulare Lake Basin Water Storage District," submitted to the California District Securities Commission as an exhibit to defendant district's Amended Report and Estimate of Cost for Project 1, states at pages 73-74:

"The proposed divisions follow generally the lines of existing reclamation districts. It is also understood that they are adjusted to give the balance of representation desired by the parties to the agreement. . . ."

statutory directive is irrelevant to the drawing of division lines in the defendant district for all water rights in the district are of the same character.²⁰

Finally, defendant seems to imply that the malapportionment of divisions does not involve state action subject to the Equal Protection Clause. But as noted earlier, the present divisions were approved by the California Department of Water Resources as required by the statute (see note 17), and "the prohibitions of the Fourteenth Amendment extend to 'all actions of the State denying equal protection of the laws' whatever the agency of the State taking the action. . . ." *Cooper v. Aaron*, 358 U.S. 1, 17 (1958). See also *Avery v. Midland County*, *supra*, 390 U.S. 474, 479-80.

James R. Browning
Circuit Judge

²⁰Plaintiffs' factual statement, which defendant accepted without response, states:

"The water rights of Tulare Lake Basin Water Storage District, for example, its water right in the Kings River as stated in the Kings River Schedule, and its water right derived from its contract with the state of California, are for the equal benefit of the lands in the District. That is to say, there are no gradations or priorities within the District as to District water."

The following appears in defendant's Amended Report and Estimate of Cost for Project 1 (see note 19):

"That is to say, all waters—whatever that quantity may be—acquired by or under control of the District, are to be prorated equally over the acreage in that District. Or, in other words, all things being equal, every acre of land within the boundaries of your District will be equally benefited by your project." (Emphasis in original.)

Notice From Clerk to Counsel March 10, 1972.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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RE: F-414-Civ.

Salyer Land Co. v. Tulare Lake Water

Pursuant to the order of the Hon. M. D. Crocker. You are hereby notified that JUDGMENT (heretofore filed on February 17, 1972) in each of the above-entitled cases was entered in the docket on March 10, 1972, pursuant to Rule 77(d) F. R. C. P. When the time for

appeal has expired (without appeal being taken), it will be appreciated if counsel will arrange for pick-up of their exhibits without further notice.

I hereby certify that this notice was mailed on March 10, 1972.

CLERK, U. S. DISTRICT COURT,

BY

D. D. BUTLER, Deputy Clerk

Supreme Court of the United States

No. 71-1436

Salzer Land Company, Et Al.,

Appellants

v.

Tulare Lake Basin Water Storage District

**APPEAL from the United States District Court
in the Eastern District of California.**

**The statement of jurisdiction in this case
having been submitted and considered by the Court,
jurisdiction is noted.**

June 26, 1972